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VOLUME 1

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 40

GILBERTVILLE TRUCKING CO., INC., ET AL.,
APPELLANTS,

vs.

UNITED STATES, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED NOVEMBER 10, 1961

PROBABLE JURISDICTION NOTED FEBRUARY 19, 1962

SUPREME COURT OF THE UNITED STATES

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INDEX

VOLUME 1

	Original	Print
Record from the United States District Court for the District of Massachusetts		
Complaint	1	1
Appendix "A"—Commission's report of June 9, 1959	12	11
Appendix "B"—Commission's order of June 9, 1959	30	25
Appendix "C"—Commission's order of Febru- ary 15, 1960	32	27
Appendix "D"—Commission's order of July 5, 1960	33	28
Appendix "E"—Examiner's proposed report served June 6, 1957	34	30
Appendix "A"—Operating authority au- thorized to be acquired and retained by The L. Nelson & Sons Transportation Co.	96	79

	Original	Print
Record from the United States District Court for the District of Massachusetts—Continued		
Complaint—Continued		
Appendix "F"—Division 4's report and order of February 26, 1958	98	81
Appendix "G"—Division 4's order of October 2, 1958	116	95
Appendix "H"—Commission's order of July 18, 1960	117	97
Joint answer of the United States of America and Interstate Commerce Commission	120	98
Exhibit "A"—Order of the Commission of August 11, 1960	124	101
Stenographic transcript of May 10, 1961	255	102
Appearances	255	102
Offers in evidence	256	103
Colloquy between Court and counsel	285	103
Opinion, Wyzanski, D.J.	319	108
Judgment	336	127
Notice of appeal to the Supreme Court of the United States	337	127
Exhibit "A" to District Court proceedings consisting of proceedings before the Interstate Commerce Commission	343	131
Application filed in Docket No. MC-F-6099, signed August 27, 1955	343	131
Exhibit "A"—Information respecting transferee	347	136
Exhibit "A"—Certificate of public convenience and necessity in No. MC 60186 and Permit in No. MC 93421	350	140
Exhibit "A"—Certificate of public convenience and necessity in No. MC 42671	353	144
Exhibits "A-3 and A-4"—Certified copy of vote of Board of Directors of The L. Nelson & Sons Transportation Company	355	146
Exhibit "A-5"—The L. Nelson and Sons Transportation Company Balance Sheet—May 31, 1955	356	147

Record from the United States District Court for
the District of Massachusetts—Continued

Exhibit "A" to District Court proceedings con-
sisting of proceedings before the Interstate
Commerce Commission—Continued

Application filed in Docket No. MC-F-6099,
signed August 27, 1955—Continued

Exhibit "A"—Information respecting trans-
feree—Continued

Exhibit "A-7(1)"—The L. Nelson and
Sons Transportation Company Operat-
ing Statement from January 1, 1955 to
May 31, 1955

357 148

Exhibit "A-7(2)"—The L. Nelson and
Sons Transportation Company Operat-
ing Statement from January 1, 1954 to
December 31, 1954

358 149

Exhibit "A-7(3)"—The L. Nelson & Sons
Transportation Company Income State-
ment—January 1, 1953 to December 31,
1953

359 150

Exhibit "B"—Information respecting trans-
feror

360 151

Exhibit "B"—Certificate of Public Con-
venience and necessity No. MC 87431

362 154

Exhibits "B-2 and B-3"—Certified copy of
vote of stockholders and Board of Direc-
tors of Gilbertville Trucking Co., Inc.

368 162

Exhibit "B-4"—Gilbertville Trucking Co.,
Inc.—Balance Sheet—May 31, 1955

369 163

Exhibit "B-6(1)"—Gilbertville Trucking
Co., Inc.—Operating Statement—Jan.
1, 1955 to May 31, 1955

370 164

Exhibit "B-6(2)"—Gilbertville Trucking
Co., Inc.—Operating Statement—Jan.
1, 1954 to Dec. 31, 1954

371 165

Exhibit "B-6(3)"—Gilbertville Trucking
Co., Inc.—Operating Statement—Jan.
1, 1953 to Dec. 31, 1953

372 166

Record from the United-States District Court for
the District of Massachusetts—Continued

Exhibit "A" to District Court proceedings con-
sisting of proceedings before the Interstate
Commerce Commission—Continued

Application filed in Docket No. MC-F-6099,
signed August 27, 1955—Continued

Exhibit "C"—Nature of proposed transac- tion and terms and conditions thereof	373	167
Exhibit "C-1"—Agreement dated August 18, 1955, between Kenneth Nelson, Gil- bertville Trucking Co., Inc., and the L. Nelson & Sons Transportation Company	374	169
Appendix—Table showing basis of de- termining valuation and issuance of Nelson stock in exchange for Gilbert- ville stock	376	173
Exhibit "C-2"—Gilbertville Trucking Co., Inc.—Statement of ledger value for all property as of May 31, 1955	377	174
Exhibit "C-3"—Gilbertville Trucking Co., Inc.—Encumbered property as of May 31, 1955	378	175
Exhibit "C-5"—The L. Nelson and Sons Transportation Company (including Gilbertville Trucking Company, Inc.) Consolidated "Giving Effect" balance sheet as of May 31, 1955	379	176
Exhibit "C-7"—The L. Nelson and Sons Transportation Company and Gilbert- ville Trucking Company consolidated "Giving Effect" operating statement from January 1, 1955 to May 31, 1955	380	177
Exhibit "C-8" (omitted in printing)	380	177
Exhibit "D"—Facts and circumstances which applicants rely upon to warrant approval of the proposed transaction	381	178
Order of the Commission of December 20, 1955	384	181
Transcript of Hearing	1	183
Appearances	1	183

Record from the United States District Court for
the District of Massachusetts—Continued
Exhibit "A" to District Court proceedings con-
sisting of proceedings before the Interstate
Commerce Commission—Continued
Transcript of Hearing—Continued
Testimony of, Sanol J. Solomon—

direct (by Miss Kelley)	27	184
cross (by Mr. Mueller)	143	222
cross (by Mr. Keenan)	183	243
cross (by Mr. Barrett)	358	327
redirect (by Miss Kelley)	434	364
recross (by Mr. Mueller)	464	383
recross (by Mr. Keenan)	467	384

VOLUME 2

Testimony of Charles G. Chilberg—

direct (by Miss Kelley)	479	387
cross (by Mr. Mueller)	509	399
cross (by Mr. Barrett)	539	409
redirect (by Miss Kelley)	669	432
recross (by Mr. Mueller)	685	439
recross (by Mr. Barrett)	687	440

Kenneth A. H. Nelson—

direct (by Miss Kelley)	698	444
cross (by Mr. Mueller)	719	458
cross (by Mr. Barrett)	750	474
redirect (by Miss Kelley)	802	506
recross (by Mr. Mueller)	813	513
redirect (by Miss Kelley)	830	523

Edward D. Shea—

direct (by Mr. Mueller)	835	525
cross (by Miss Kelley)	944	576
redirect (by Mr. Mueller)	995	606
recross (by Miss Kelley)	1002	608
redirect (by Mr. Mueller)	1002	609

Joseph H. La Cour—

direct (by Mr. Mueller)	1003	609
cross (by Miss Kelley)	1064	634
redirect (by Mr. Mueller)	1111	658

	Original	Print
Record from the United States District Court for the District of Massachusetts—Continued		
Exhibit "A" to District Court proceedings consisting of proceedings before the Interstate Commerce Commission—Continued		
Transcript of Hearing—Continued		
Testimony of Edward D. Shea—		
(recalled)—		
direct (by Mr. Mueller)	1117	659
cross (by Miss Kelley)	1123	662
Stipulation of counsel	1144	665
Testimony of Kenneth H. Nelson—		
(recalled)—		
direct (by Miss Kelley)	1175	666
Applicant's Exhibit No. 22—Agreement dated March 2, 1953 between Wilfred J. Vachon and Kenneth Nelson	1178	667
Applicant's Exhibit No. 24—Equipment operated by The L. Nelson and Sons Transportation Co., as of July 31, 1956	1182	671
Applicant's Exhibit No. 25—Equipment operated by Gilbertville Trucking Company, Inc., as of July 31, 1956	1183	672
Government's Exhibit No. 27—Driver-Equipment Compliance Check	1184	673
Government's Exhibit No. 29—Driver-Equipment Compliance Check	1185	674
Government's Exhibit No. 30—Gilbertville Trucking Co., Inc., Delivery Sheet No. 67848 and Driver-Equipment Compliance Sheet	1186	675
Government's Exhibit No. 31—L. Nelson & Sons Trans.—Driver-Equipment Compliance Sheet	1188	677
Government's Exhibit No. 32—Gilbertville Trucking Co., Inc., Delivery Sheet No. 67856 and Driver-Equipment Compliance Sheet	1189	678

INDEX

vii

Original Print

Record from the United States District Court for
the District of Massachusetts—Continued

Exhibit "A" to District Court proceedings con-
sisting of proceedings before the Interstate
Commerce Commission—Continued

Government's Exhibit No. 34—Gilbertville
Trucking Co., Inc., Delivery Sheet No.
58446A; The L. Nelson & Sons Transporta-
tion Co., Delivery Sheet No. 4822; Driver-
Equipment Compliance Check; Reports of
Vehicle Inspection and Agreement; contract
and lease for interchange of motor vehicle
equipment

1191 680

Corrected order of Interstate Commerce Com-
mission of June 16, 1954

1197 686

Order noting probable jurisdiction

1199 688

[fol. A]

DOCKET ENTRIES

Civil Action

No. 60-562-S

3 Judge Court

GILBERTVILLE TRUCKING CO., INC., L. NELSON & SONS
TRANSPORTATION COMPANY, CHARLES G. CHILBERG, CLIF-
FORD, J. O. NELSON, GEETA C. CARLSON, and KENNETH
A. H. NELSON,

v.

THE UNITED STATES OF AMERICA, Defendant,

and

INTERSTATE COMMERCE COMMISSION, Intervening Defendant.

28 USC 1336, 1398, 2284, 2321-25

Basis of action: Enjoin and set aside 3 orders
Jun 9, 59; Feb 15, 60; Jul 5, 60.

For Plaintiff:

Mary E. Kelley, 10 Tremont St., Boston 8, Laf 3-6353;

Henry E. Foley, Loyd M. Starrett, Foley, Hoag & Eliot,
10 Post Office Sq., Boston, HU 2-1390;

John J. Graham, 122 Bowdoin St., Boston, Rich 2-1708.

For Defendants:

Robert W. Ginnane, Gen. Counsel;

John H. D. Wigger, Atty., Dept. of Justice, Washington
25, D.C.;

James Y. Piper, Asst. Gen. Counsel, Int. Com. Com.,
Washington 25, D.C.;

James W. Noonan, Asst. U.S. Atty.,

for U.S. of America.

[fol. B]

DATE

FILINGS—PROCEEDINGS

1960

Aug. 8 Complaint (verified) filed

Appendices attached A-H inc. (being Commission's orders, report, etc)

Motion for temporary restraining order and interlocutory judgment, with affidavit of Mary E Kelley attached, filed.

8 Summons issued.

16 Designation of three-judge District Court by Hon. Peter Woodbury under 28 USC 2284, filed, designating Peter Woodbury, Chief Judge, U S Court of Appeals for First Circuit, and Charles E. Wyzanski, Jr., U S District Judge, to sit with George C Sweeney, Chief Judge, USDC.

16 Copy of complaint and motion furnished to all 3 judges.

12 Summons retd. by Marshal, served Aug. 12, 1960, filed

Oct. 5 Motion of the Interstate Commerce Commission for leave to intervene as a party deft and notice of motion filed Copy furnished to each of the three Judges

13 WOODBURY, Ch. C.J., GEORGE C. SWEENEY, Ch. Dist. J. and CHARLES E. WYZANSKI, D.J. Order granting leave to Interstate Commerce Commission to intervene as a party deft. Order filed

13 Joint answer of the United States of America and Interstate Commerce Commission, Intervening Deft. filed Notice sent to James Y. Piper, Esq., Asst. Gen. Counsel, Interstate Commerce Com., Washington 25, D.C.

DATE
1961

FILED—PROCEEDINGS

Feb. 16 Appearance of James W. Noonan, Asst. U.S. Atty. for United States of America, Deft., filed

27 SWEENEY, Ch.J. The following schedule has been set in connection with case:

(1) Plaintiffs' briefs to be filed by March 20, 1961

(2) Defendants' answering briefs to be filed by April 3, 1961

(3) Plaintiffs' reply briefs to be filed by April 13, 1961

(4) Hearing to be held Monday, May 1, 1961 at 11 A.M. Letter sent to all counsel of record by Judge Sweeney's office Feb. 27, 1961. See letter in file

Apr. 3 Appearance of Loyd M. Starrett for plaintiff filed

3 Brief for plaintiffs filed

3 Certificate of service filed

20 Letter correcting typographical errors in plaintiff's brief filed

21 Brief for plaintiffs (with typographical errors corrected per letter dated April 20, 1961) filed

24 Brief for defendants filed

May 4 Reply brief for plaintiffs filed

4 Certificate of service filed

10 SWEENEY, Ch.J. Hearing: taken under advisement.

July 7 Wyzanski, J. Opinion entered. "... Complaint dismissed with prejudice and costs."

D

[fol. C]

DATE

1961

FILINGS--PROCEEDINGS

July 18, WOODBURY, Ch. C.J., SWEENEY, Ch., D.J. and WYZANSKI, D.J. "After hearing and in accordance with the opinion of the Court, it is ORDERED action dismissed with prejudice and with costs." Judgment entered.

Copy to Henry E. Foley, Esq., & Loyd M. Starrett, Esq. Foley, Hoag & Eliot, 10 Post Office Square, Boston; Asst. U. S. Attorney Noonan; Robert W. Ginnane, Esq. General Counsel, and James Y Piper, Asst. General Counsel, I.C.C., Washington 25, D. C.; John H. Wigger, Esq., Department of Justice, Washington 25, D. C.; Mary E. Kelley, Esq., 10 Tremont St., Boston 8 and John J. Graham, Esq., 122 Bowdoin St., Boston.

Sept. 11 Notice of Appeal to the Supreme Court of the U. S., filed by plaintiffs.

Oct. 4 SWEENEY, Ch.J. Motion for transmittal of original papers to Supreme Court, assented to, allowed.

4 Sterographic record of Hearing May 10, 1961 (Pp. 1-64), filed.

[fol. 1]

**IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Civil Action No. 60-562-S

GILBERTVILLE TRUCKING CO., INC., L. NELSON & SONS TRANSPORTATION COMPANY, CHARLES G. CHILBERG, CLIFFORD J. O. NELSON, GRETA C. CARLSON, AND KENNETH A. H. NELSON, Plaintiffs,

v.

THE UNITED STATES OF AMERICA, Defendant.

COMPLAINT—Filed August 8, 1960.

Plaintiffs Gilbertville Trucking Co., Inc., The L. Nelson and Sons Transportation Company (both corporations), Charles G. Chilberg, Clifford J. O. Nelson, Greta C. Carlson and Kenneth A. H. Nelson, for their complaint herein allege:

1. This action is brought pursuant to the provisions of Chapters 85, 87, 155 and 157 of the Judicial Code (Title 28, United States Code, Sections 1336, 1398, 2284, 2321-2325), to enjoin, annul and set aside three orders of the Interstate Commerce Commission (hereinafter called the Commission) entered against plaintiffs in a proceeding instituted by the corporate plaintiffs known as "No. MC-F-6099, The L. Nelson & Sons Transportation Co.—Control and Merger—Gilbertville Trucking Co., Inc." (60 M.C.C. 257) and in a proceeding conducted jointly therewith known as "No. MC-F-6178, The L. Nelson & Sons Transportation Co.—Investigation of Control—Gilbertville Trucking Co., Inc.", and to require the Commission to reopen said proceedings for further consideration. The aforementioned orders entered on June 9, 1959, February 15, 1960, and July 5, 1960, respectively, are based upon a report of the Commission (three Commissioners dissenting and three not participating) filed

in said proceedings on June 9, 1959 (hereinafter called the Commission's report). A copy of the Commission's report is annexed hereto as Appendix A. A copy of the Commission's order of June 9, 1959 is annexed hereto as Appendix B. Copies of the Commission's orders of February 15, 1960 and July 5, 1960 entered upon the petitions of L. Nelson & Sons Transportation Company for reopening, reconsideration and an alternative method of eliminating the business practices the Commission found to be unlawful, are annexed hereto as Appendices C and D, respectively.

[fol. 2] 2. Plaintiff, Gilbertville Trucking Co., Inc., is a motor carrier corporation, organized and existing under and by virtue of the laws of the State of Massachusetts, with a principal office and place of business in the City of Worcester, Commonwealth of Massachusetts, located in the Judicial District of Massachusetts.

3. Plaintiff, L. Nelson & Sons Transportation Company is a motor carrier corporation, organized and existing under the laws of the State of Connecticut, with a principal office and place of business in Ellington, Connecticut. It has authorized capital of 500 shares common stock, of which 494 shares are outstanding, and 6 shares are Treasury stock.

4. Plaintiff, Charles G. Chilberg, of Rockville, Connecticut, is President, Treasurer, a Director and owner of 226 shares (45.75%) of the stock of L. Nelson & Sons Transportation Company.

5. Plaintiff, Clifford J. O. Nelson, of Dover, Massachusetts, is Assistant Treasurer, Clerk, a Director and owner of 226 shares (45.75%) of the Stock of L. Nelson & Sons Transportation Company.

6. Plaintiff, Greta C. Carlson of West Granby, Connecticut, is a Director and owner of 42 shares of the stock of L. Nelson & Sons Transportation Company.

7. Plaintiff, Kenneth A. H. Nelson, of Manchester, Connecticut, is President, Treasurer and owner of all of the issued and outstanding stock of Gilbertville Trucking Co., Inc.

8. The Corporate Plaintiffs are both common carriers by motor vehicles, performing service in interstate or foreign commerce, and as such are subject to the provisions of the Interstate Commerce Act, as amended, (Title 49, United States Code, (hereinafter called the Act)), including Sections 5 (2), 5 (4), 5 (5), 5 (6) and 5 (7) thereof.

9. Defendant is the United States of America.

10. Plaintiff, Gilbertville Trucking Co., Inc., is authorized under certificate No. MC-87431 issued to it by the Commission, to transport general commodities, with certain exceptions, principally over irregular routes, between points in the states of Massachusetts, Rhode Island, Connecticut, and points in New York and New Jersey within 20 miles of New York City; and certain specific commodities over specified regular routes and irregular routes between points in the above described area plus such points as Philadelphia, [fel. 3] Pa. and Rockland, Delaware.

11. Plaintiff, The L. Nelson & Sons Transportation Company, is authorized under Certificate No. MC-42871, Sub. 3, issued to it by the Commission to transport in interstate or foreign commerce (a) materials used in the manufacture of cloth, waste material resulting therefrom, and supplies and materials used in connection with transportation or processing of such commodities when moving to or from places of processing, except liquid commodities, in bulk, in tank vehicles, over irregular routes, (1) between Hudson, North Chelmsford, Norton, Lowell, Lawrence, and Marlboro, Mass. on the one hand, and on the other, Manchester, Concord and Somersworth, N.H. and points in Providence and Bristol Counties, R.I.; (2) between Providence, Woonsocket and Pawtucket, R.I., Hartford, Hazardville and Somersville, Conn., and points in Massachusetts east of the Connecticut River, on the one hand, and on the other, New York, N.Y., Jersey City, Passaic, Newark and Camden, New Jersey, Philadelphia, Pa. and points in Pennsylvania within 30 miles of Philadelphia; (3) between Hazardville, on the one hand, and, on the other, Millbury and East Douglas, Mass.; (4) from Philadelphia, Pa. and Camden, N.J. to points in Tolland and Hartford Counties, Conn. on and

north of U.S. Highway 6; and (b) empty containers used in transporting the commodities named above over irregular routes from the said points in Tolland and Hartford Counties, to Philadelphia and Camden.

12. While the motor carrier operations of the two corporate plaintiffs are in the same general areas, due to the limitation in Nelson's operating authority to textiles and the limitation primarily to point to point operation, it is not competitive to a material extent with the general commodity operations of Gilbertville.

13. During the year 1955, the stockholders and Boards of Directors of the corporate plaintiffs concluded that it would be desirable to merge the operating rights and other properties of the two respective corporations.

14. On August 18, 1955, the separate Boards of Directors of the two corporate plaintiffs authorized the application to the Interstate Commerce Commission for authority under Section 5 of the Act for the control of Gilbertville Trucking Co. and for the merger of the operating rights and property of said company with those of The L. Nelson & Sons Transportation Company.

15. On October 6, 1955, joint application was filed with the Commission by the corporate plaintiffs under Section 5 (2) of the Act (hereinafter called the application), for [fol. 4] authority to control, through exchange pro-rata of the shares of stock of Gilbertville Trucking Co., Inc. for shares of The L. Nelson and Sons Transportation Company, and for merger of the operating rights and property of the former into those of the latter. The application (assigned Docket No. MC-F-6099) was made on the ground that the proposed control and merger would be in the public interest and in the interest of the corporate plaintiffs for the following reasons, among others:

(a) The trend in the Textile Industry to relocate plants in the South, has resulted in unbalanced loading for The L. Nelson & Sons Transportation Company, whose authority under certificate No. MC-42871, issued by the Commission, is limited to service to the Textile industry:

(b) Merger of the operations and properties would result in elimination of wasteful transportation, since both companies dispatch trucks daily to the same general areas; and would permit greater utilization of equipment and manpower;

(c) Merger would permit effectuation of numerous economies and improvements in service which the corporate plaintiffs would not otherwise be able to accomplish; and

(d) Merger would strengthen the financial and operating position of the surviving company so as to permit improved efficient operations, and to assure the continuance in the future of adequate service to the shipping public which has relied on and utilized the services provided under the operating authorities of Gilbertville Trucking Co., Inc. and The L. Nelson & Sons Transportation Company since long prior to the passage of the Motor Carrier Act in 1935.

16. The Commission is authorized under Section 17 of the Act to divide its members into as many divisions as it may deem necessary. As a result of that authority the Commission for many years has one division designated as Division 4 to which it has directed matters before it involving, among other things, applications under Section 5 (2) of the Act, known as Finance Dockets. The application of the corporate plaintiffs was directed to Division 4 and the proceeding thereon was assigned Finance Docket No. 6099.

17. By order entered December 20, 1955, assigned Docket No. MC-F-6178, the Commission instituted the investigation proceeding referred to in paragraph 1 hereof under Section 5 (7) of the Act, for the purpose of inquiring into and [fol. 5] concerning the possibility that the control and management of the Gilbertville corporation in a common interest with the Nelson corporation may have been effectuated in violation of Section 5 (4) of the Act, and referred that proceeding to an Examiner for hearing on a joint record with hearings on plaintiffs' application.

18. After long delay, an extensive joint hearing extending from September 17th through September 27th, 1956,

was held before an Examiner on the aforementioned proceedings. Evidence was adduced at the hearing on the questions whether the plaintiffs were in violations of Section 5 (4) of the Act and whether, even if so, approval of the finance application would be consistent with the public interest. Certain rail and motor carriers appeared in opposition at the hearing, but offered no evidence as to alleged violations of Section 5 (4).

19. On June 6, 1957, the Examiner served his proposed report of recommended findings. That report which is annexed hereto as Appendix E, although concluding that plaintiffs had technically violated Section 5 (4) of the Act because of certain acts, practices and arrangements, *no one of which afforded a clear indication of control or management in a common interest*, found that the finance proceeding under Section 5 (2) would be consistent with the public interest, and should be approved subject to certain conditions; and that upon consummation of the finance transaction, the investigation proceeding be terminated.

20. Thereafter, exceptions to the report of the Examiner were filed by plaintiffs, the Commission's Bureau of Inquiry and Compliance, and certain other interveners.

21. On February 26, 1958, a Division 4, comprised of Commissioners Winchell, Minor and Walrath, (Commissioner Winchell dissenting) issued its report (a copy of which is annexed hereto as Appendix F) in which the factual statements in the Examiner's report were adopted. Division 4 concurred in the Examiner's conclusion as to the violation of Section 5 (4) of the Act, but stated that because of such violation the finance transaction in docket No. MC-F-6099 "has not been shown to be consistent with the public interest, and that the application accordingly should be denied."

22. Thereafter, the corporate plaintiffs filed a petition for reconsideration and exceptions to the findings of division 4. Replies to those petitions were filed by the Commission's Bureau of Inquiry and Compliance and certain of the other parties who appeared in opposition.

23. Thereafter by order dated October 2, 1958, a copy of which is annexed hereto as Appendix G, Division 4 of the Commission ordered:

"That the proceedings be, and they are hereby reopened for reconsideration on the present record."

24. However, the Full Commission issued its report decided June 9, 1959 (Appendix A hereto) in which without explanation at sheet 3 states: "We have recalled the proceedings from the division, for consideration and determination in this report." Said report denied plaintiffs' application.

25. By order entered June 9, 1959, (Appendix B, hereto) the Commission ordered plaintiffs to:

- (a) "Terminate the violation of the provisions of Section 5 (4) found in said report to have been accomplished".
- (b) "Divest themselves of any and all interest which they may have in the capital stock of Gilbertville Trucking Co., Inc., ..."
- (c) Report to the Commission within 60 days from the effective date thereof the action taken by them to comply therewith.

26. That order (Appendix B hereto) expressly recited that the report of the Commission entered June 9, 1959 (Appendix A hereto) and the prior report of division 4 dated February 26, 1958 (Appendix F hereof) were made a part thereof.

27. On August 17, 1959, prior to the effective date of said order (Appendix B hereto) as extended by the Commission, plaintiffs filed petition for reopening, and reconsideration of the June 9, 1959 order; which was denied by order of the Commission dated February 15, 1960. (Appendix C hereof.)

28. On March 7, 1960, prior to the effective date of the order of February 15, 1960, a further petition was filed

with the Commission requesting, as an alternative method for compliance with the divestment order, cancellation of the outstanding certificates of The L. Nelson & Sons Transportation Company, and simultaneous with such cancellation that the Commission vacate and set aside the order of June 9, 1959, and other orders involved in this proceeding. Such petition was denied by order of the Commission dated July 5, 1960. (Appendix D hereof.)

29. The Commission extended the effective date of its orders pending consideration of plaintiffs' two petitions. The order of July 5, 1960, (Appendix D), was set to become [fol. 7] effective on July 20, 1960. Under date of July 18, 1960 (Appendix H), the Commission extended the effective date to August 15, 1960.

30. The report of the Commission is erroneous in law, arbitrary and contrary to, and without support in the evidence, in excess of the Commission's powers under the Act, and a denial to plaintiffs of rights assured to it under the Act. Accordingly, the orders of the Commission denying the authority sought by plaintiffs herein are null and void and should be set aside, and the Commission should be required by appropriate order of this Court to reconsider the matter and to enter an order in accord with the law and the evidence.

31. Without limiting the generality of the allegations of paragraph 30, above, the *minority* of the Commission that decided the report erred as a matter of law and in making its report and entering its said orders, acted arbitrarily and contrary to, and without support in the evidence in the following respects, among others:

(a) in concluding that the Examiner made no error in his rulings at the hearing, which rulings were prejudicial to plaintiffs;

(b) in condoning the apparent collusion between the Commission's Bureau of Inquiry and Compliance and the Examiner which resulted in the application proceeding being *used* as a vehicle for investigation, all to the end that a full and fair hearing was denied and prevented in the application proceeding;

(c) in recalling the proceedings from the division and reversing its order of October 2, 1958 to reopen the matter for reconsideration, see paragraphs 23 and 24, hereof;

(d) in condoning, by failing to reverse and overrule, a series of erroneous rulings at the hearing and during the appeals, which rulings had the effect of leaving unrebutted partial or half-truths which were taken to support the Commission's findings while preventing evidence that would have modified by full disclosure the business methods pursued by plaintiffs;

(e) in basing its conclusions on hearsay evidence introduced through Commission personnel by the Commission attorney before a Commission Examiner;

(f) in concluding that the result of a series of admittedly legal acts constituted a violation of the Act without stating in its report and orders as required by law the reasons or basis for the findings and conclusions contained therein upon the material issues of fact, law, or discretion presented [fol. 8] on the record.

32. The threatened enforcement of the Commission's orders of June 9, 1959, February 15, 1960, and July 5, 1960 (Appendices B, C, and D hereto), will immediately adversely and irreparably injure plaintiffs in that, among other things:

(a) The Commission's orders of June 9, 1959, February 15, 1960, and July 5, 1960 (Appendices B, C and D hereto) confront all plaintiffs with the requirement of divesting themselves of all interest in one of the corporate plaintiffs, Gilbertville Trucking Co., Inc., when in fact all of the stock in said corporate plaintiff is owned by only one plaintiff, Kenneth A. H. Nelson, who is not in any way an employee, officer, director, stockholder, or otherwise financially connected with the other corporate plaintiff, The L. Nelson & Sons Transportation Company,

(b) Said Commission's orders would leave plaintiff Kenneth A. H. Nelson with the requirement of selling his business at a time when the Commission's acts have notified all

potential buyers of said plaintiff's requirement, thereby destroying any market for his business,

(c) Said Commission's orders would further leave plaintiff Kenneth A. H. Nelson without a livelihood without reason therefor,

(d) Said Commission's orders require plaintiffs to terminate the violation of provisions of the Act without specifying which of the actions of plaintiffs constituted a violation of the Act and, in fact, while relating that none of the actions of the plaintiffs constituted a clear indication of control or management in a common interest,

(e) Plaintiffs by reason of the wholly arbitrary and improper denial of their application will be unable to put into effect the many benefits, including transportation and other economies, which would accrue to plaintiffs (as well as to the public) should the application be granted.

33. Plaintiffs have no adequate remedy at law.

Wherefore, plaintiffs having exhausted their administrative remedies before the Commission, pray:

1. That a Court, constituted as required by Sections 2284 and 2321-2325 of the Judicial Code (Title 28, United States Code), be convened and that said Court so constituted and convened shall hear and determine this action;

[fol. 9] 2. That said Court so constituted and convened, pending final hearing and determination of this action, shall enter an order granting an interlocutory injunction restraining the enforcement, operation or execution, in whole or in part, of said orders of June 9, 1959, February 15, 1960, and July 5, 1960.

3. That upon final hearing of this action a permanent injunction issue declaring that said orders of the Commission of June 9, 1959, February 15, 1960, and July 5, 1960, are null and void, and that they be enjoined, annulled and set aside, and that their enforcement, execution and operation be forever enjoined.

4. That the proceedings be remanded to the Commission for reconsideration in conformity with the applicable law and the evidence; and

5. That plaintiffs be granted such other and further relief as may be proper in the premises including the costs and disbursements of the action.

August 5, 1960

Mary E. Kelley, 10 Tremont Street, Boston 8, Massachusetts, LA 3-6353.

John J. Graham, 122 Bowdoin Street, Boston, Massachusetts, RI 2-1708.

[fol. 10] *Duly sworn to by Mary E. Kelley, jurat omitted in printing.*

[fol. 12]

APPENDIX "A" TO COMPLAINT

INTERSTATE COMMERCE COMMISSION

DATE OF SERVICE
JUN 15 1959

No. MC-F-6099¹

THE L. NELSON & SONS TRANSPORTATION Co.—CONTROL
AND MERGER—GILBERTVILLE TRUCKING Co., INC.

Decided June 9, 1959.

Upon reconsideration:

1. In No. MC-F-6099, application of The L. Nelson & Sons Transportation Co., for authority to acquire control of Gilbertville Trucking Co., Inc., through purchase of capital stock, for merger into the former of the operating rights and property of the latter for ownership, management and operation, and for the acquisition by Clifford J. O. Nelson and Charles G.

¹ This report embraces No. MC-F-6178, The L. Nelson & Sons Transportation Co.—Investigation of Control—Gilbertville Trucking Co., Inc.

Chilberg of control of the operating rights and property through the control and merger, denied.

2. In No. MC-F-6178, control and management of Gilbertville Trucking Co., Inc., in a common interest with The L. Nelson & Sons Transportation Co., found to have been effectuated and to be continuing in violation of section 5(4), Interstate Commerce Act. Order entered directing termination of such violation. Prior report 75 M.C.C. 45.

Appearances as shown in the prior report.

REPORT OF THE COMMISSION ON RECONSIDERATION

BY THE COMMISSION:

In the prior report, 75 M.C.C. 45, decided February 26, 1958, by division 4, (1) in No. MC-F-6099, authority was withheld under section 5 of the Interstate Commerce Act for the acquisition by The L. Nelson & Sons Transportation Co., of Ellington, Conn., of control of Gilbertville Trucking Co., Inc., of Gilbertville, Mass., herein called Nelson and Gilbertville, respectively, through purchase of capital stock, the concurrent merger of the operating rights and property of Gilbertville into Nelson for ownership, management, and [fol. 13] operation, and for Clifford J. O. Nelson, of Dover, Mass., and Charles G. Chilberg, of Rockville, Conn., who control Nelson through ownership by each of 45.8 percent of its outstanding capital stock, to acquire control of Gilbertville through the transaction, and (2) in No. MC-F-6178, it was found that the control and management of Nelson and Gilbertville in a common interest had been effected and was continuing in violation of section 5(4) of the act; that the respondents, Nelson, Gilbertville, Charles G. Chilberg, Clifford J. O. Nelson, Greta C. Carlson, and Kenneth A. H. Nelson had participated in accomplishing such control and management in a common interest and in its continuance; and that respondents should terminate the violation. An order was entered denying the application in No. MC-F-6099, ordering termination of the violation, and requiring

certain respondents to report within 60 days the steps taken by each to comply.

By petition filed April 21, 1958, petitioners sought reconsideration of the report and order of February 26, 1958, or in the alternative, oral argument. Replies were filed by our Bureau of Inquiry and Compliance, herein called the Bureau, and joint replies were filed by (1) The Adley Express Company, M. & M. Transportation Company, and Hemingway Brothers Interstate Trucking Company, herein called the Adley group, (2) P. B. Mutrie Motor Transportation, Inc., Alvin R. Holmes, doing business as Holmes Transportation Service and/or Jones Express, Newburgh Transfer, Inc., and Taylor's Express Co., herein called the Mutrie group, and (3) Downing & Perkins, Inc., H. T. Smith Express Company, Lombard Bros., Inc., and National [fol. 14] Transportation Company, herein called the Downing group. A motion to strike portions of the petition of petitioners was filed by the Downing group, and a motion to strike the entire petition was filed by class I rail carriers in eastern territory, both on the basis that the petition contained redundant, immaterial, impertinent, or scandalous matter in violation of Rule 1.4(d) of the Commission's Rules of Practice. The Downing group also alleged that the petition contained new material not properly for consideration at this time. Petitioners replied to the motions. Motions to strike portions of the replies of the Bureau and the Mutrie group were filed by petitioners and the Bureau replied. By order of October 2, 1958, Division 4 reopened the proceedings for reconsideration on the present record. We have recalled the proceedings from the division, for consideration and determination in this report. Contentions raised by the petitioners and protestants not detailed herein have been considered and are deemed without merit.

Petitioners argue that the motion of "Class I rail carriers" to strike their petition for reconsideration should be dismissed, as the complaining parties are not fully identified; that it is doubtful all of the eastern railroads have agreed to the motion; and that the rail carrier protestants presented no evidence in the proceeding and their position is unknown. They also contend that the persons preparing the motion did not participate in the hearing.

and are unfamiliar with the matters involved. In our opinion, the arguments of petitioners are without merit. The rail carrier association has participated in the proceedings [fol. 15] from the beginning and if petitioners desired more detailed information as to the specific membership of the association, they should not have waited until this late date. The contentions of the rail carriers adequately reflect their interest and position in the proceedings. The attorney preparing the motion, although different from the attorney participating at the hearing and the attorney preparing other pleadings in this proceeding, is a representative of the association or of a member thereof, and without evidence to the contrary, we must assume he was authorized to take the action he did. See *Illinois-Minnesota M. Car. Conference, Inc. v. E. L. Murphy*, 64 M.C.C. 242, and the cases cited therein.

In respect of the motion of the Downing group and of the rail carriers to strike specific portions of the petition of applicants for reconsideration, we agree that most of the matter specifically complained of is immaterial, irrelevant, scandalous, or impertinent, and as such is objectionable and properly excludable under the provisions of Rule 1.4(d) of the Commission's Rules of Practice. *Keith Ry. Equipment Co. v. Assn. of American Railroads*, 274 I.C.C. 469, 471, and *Gums and Resins from the East to the Pacific Coast*, 297 I.C.C. 435, 437. The motion of the Downing group and of the rail carriers to strike specific portions of the applicants' petition for reconsideration, to the extent any of those portions have not been considered elsewhere in this report, will be granted.

As to the motion of petitioners to strike certain portions of the reply of the Bureau, we agree that the portions of [fol. 16] such reply wherein reference is made to "wandering dissertation" and "unintelligible discussion" should be stricken from the record, and in this respect the motion of petitioners will be granted. We do not consider the other matter complained of as objectionable or beyond the scope of the interest of the Bureau in these proceedings, and the motion of petitioners in all other respects, will be denied.

Petitioners also request that certain portions of the reply of the Mutrie group be stricken from the record, as not supported by the evidence or beyond the scope of their

interest in these proceedings. Particularly they object to statements made relative to matters involved in the investigation proceeding or to the nature of the operations performed by Gilbertville, prior to March, 1953, such as:

If the Interstate Commerce Act and the regulations of the Commission pursuant thereto are to be meaningful, the Commission must take a strong stand in withholding its approval where it is obvious as it is here that Applicants seek approval *nunc pro tunc* of a transaction which already is a *fait accompli*. [sic]

It seemed clear that Gilbertville's certificate could not have been transferred to Vendee in a Section 5 proceeding in March of 1953, or whatever time a member of the Nelson family actually acquired control, because the certificate was basically dormant at that time.

Petitioners assert that the said protestants presented no evidence in the investigation proceeding and that, as to the nature of the operations of Gilbertville prior to March 1953, they successfully prevented the introduction of evidence at the hearing which would have established the continuity of such operations. It is true that the protestants presented no evidence in the investigation proceeding, and [fol. 17] the question of the nature of the operations performed by Gilbertville prior to March 1953, is too remote to be controlling of our conclusions herein. However, the argument in the reply of protestants does not alter their basic position in the section-5 proceeding, and it is clear that their appearance and interest is in support of the Bureau in the investigation case. We do not consider any of the arguments in question as objectionable, requiring that it be stricken from the record. The motion of petitioners in this respect is overruled.

In their petition for reconsideration, petitioners argue that the division erred in finding Nelson and Gilbertville had violated the provisions of section 206 and certain regulations of the Commission, in that it had conducted unlawful operations and failed to maintain safety equipment on vehicles or to keep vehicles in safe operating condition. They assert there is no evidence of record to sustain such

conclusions; that these claimed violations, in any event, are not properly for consideration in these proceedings; and that the parties have been deprived of a full and complete hearing in violation of their constitutional rights. They further argue that the division erred in finding that Nelson and Gilbertville are controlled and managed in a common interest in violation of section 5(4), pointing out that the examiner, although reaching the same conclusion, had found the question to be a borderline case. They assert that the cases cited by the division to support its conclusions, particularly *Smithsons Holding—Control—Ontario Freight Lines Corp.*, 70 M.C.C. 623, and *G. B. Powell—Purchase—Rampg*, 57 M.C.C. 597, are not in point, [fol. 18] because no ulterior motive has been shown to exist as the basis for the purchase by Kenneth Nelson of the stock of Gilbertville, that he secured advice from other family members, or that the parties involved have been guilty of flagrant violations of the act and the regulations of the Commission. They contend that the fact Gilbertville and Nelson shared the same facilities in Connecticut and the relationship of the parties was well known to the Commission prior to the filing of the section 5 application; that the division failed to give consideration to the efforts of both Nelson and Gilbertville to comply with all the rules and regulations of the Commission; and that the conclusion that the transaction in No. MC-F-6099 would not be consistent with the public interest is not supported by the weight and preponderance of the evidence.

Petitioners further argue that the division erred in finding that the protestant carriers who appeared in opposition to the section 5 transaction also appeared as interested parties in the investigation, contending, in this respect, that such protestants took no part or interest in the investigation proceeding, presented no evidence therein, and have not, in fact, alleged any violations of the act by either Nelson or Gilbertville. They allege that the division erred in substituting suspicion for facts in finding that since March, 1953, the stock of Gilbertville had been owned by Kenneth Nelson or those closely affiliated with him; in basing the unlawful common control conclusion on the activities of Kenneth Nelson prior to his purchase of the stock

[fol. 19] of Gilbertville; and on the division of interline revenues between Nelson and Gilbertville; and in reaching its conclusions without considering that the applicants-respondents had received no prior warning that any of their activities were unlawful and thereby were deprived of an opportunity to correct any deficiencies. They contend that the division erred in relying on suspicion and innuendo to justify the conclusions that applicants-respondents had violated the provisions of section 206 of the act and the regulations of the Commission; in failing to find that the transaction would be in the public interest; and in failing properly to consider the evidence of record and the supplemental data submitted with their exceptions to the examiner's report to justify the retention of authority for the transportation of sanitary napkins, facial tissues, and paper boxes, between New York, N. Y., and Wilmington, Del. Applicants-respondents further allege that the division should not use double standards to deny this application, involving small carriers, on the grounds of unlawful control, while on the other hand, finding consistent with the public interest an acquisition by the St. Louis-San Francisco Railway Company of stock control of the Central of Georgia Railway Company, and discontinuing an investigation proceeding involving those carriers in Finance Docket No. 19159, *Central of Georgia Railway Company Control*, embracing Docket No. 31977, *Central of Georgia Railway Company Investigation of Control*, — I.C.C. —, de-[fol. 20] cided July 9, 1957, herein called the Central of Georgia case.² Lastly, they question the validity of the order of February 26, 1958, asserting that it demands they cease violations of the act which are unknown, unlisted, and unspecified.

² In a report on reconsideration in the *Central of Georgia* case, decided November 14, 1958, the Commission reversed the decision of July 9, 1957, by division 4, and denied the application of the St. Louis-San Francisco Railway Company for authority to acquire control of the Central of Georgia Railway Company through ownership of capital stock, and ordered that the St. Louis-San Francisco Railway Company terminate its power to control or manage the Central of Georgia Railway Company either through disposition of the stock to uninterested parties or the transfer thereof to a corporate trustee or trustees. The effective date of that order has been postponed to allow consideration of a petition for reconsideration.

The Bureau and the protestant motor carriers, collectively and generally argue in their replies, that the petitioners have failed to show wherein the division erred, and that its conclusions are adequately supported by the evidence of record and its findings should be affirmed. They contend that the petitioners' allegations of error are not based upon facts but principally on false assumptions, unwarranted accusations, or incorrect, distorted, and unsupported arguments. The Bureau further contends that petitioners seek to misrepresent the true context of a stipulation between it and petitioners relative to the lawful observance by the carriers of an authorized gateway area; that the evidence, as detailed by the examiner in his report, clearly shows the petitioning carriers have violated the act; that the parties cannot plead they were surprised by the investigation proceeding as they received adequate prior warning that the Commission questioned their relationship; that they were forewarned of the evidence to be presented by the [fol. 21] Bureau in the investigation proceeding; that the act declares certain action to be unlawful per se and whether the parties possessed ulterior motives is not controlling; that counsel for applicants-respondents would deprive the Commission of its right to receive evidence and make findings regarding fitness in a section 5 proceeding; that it is clear the application under section 5 was filed to legalize an unlawful existing situation; that in the cases cited by applicants wherein unlawful control existed and the applications were approved, mitigating circumstances existed, whereas none exist in the instant proceedings; that no public interest has been shown to justify approval of the section 5 application; and that a strong transportation system cannot be achieved by rewarding parties for their misconduct. Protestant motor carriers concur in the findings of the division and its rejection of data submitted by petitioners with their exceptions to the examiner's report purporting to show operations under Gilbertville's authority to transport sanitary napkins, facial tissues, and paper boxes. In our opinion, rejection of the data submitted by applicants-respondents with their exceptions was proper under Rule 1.86 of the General Rules of Practice.

As stated in the prior report, none of the parties, including applicants-respondents, have disputed the factual statements of the examiner in his report, which were generally adopted in the prior report of the division. Petitioners, however, contend that such facts are not sufficient to justify the conclusion in the prior report that the control and [fol. 22] management of Nelson and Gilbertville in a common interest had been accomplished and are continuing in violation of section 5. They contend that at most, a borderline case is presented as found by the examiner, and that, as a rule, the relationship of Gilbertville and Nelson, in their operations, as detailed in the prior report and the report of the examiner, are not unusual between motor carriers generally.

The evidence shows that Mrs. Linnea Nelson, with two of her seven children, Charles and Oscar Chilberg, inaugurated the business of Nelson as a partnership in 1930. It was incorporated in 1947. As of May 14, 1948, of the 500 shares of authorized capital stock outstanding, 300 shares were held by Mrs. Nelson and 50 shares each by Charles and Oscar, and Clifford and Kenneth Nelson. Mrs. Nelson died in 1950 and her stock, less 6 shares which subsequently became treasury stock, was devised 42 shares each to her seven children. In June and September, 1951, and in January, 1953, Oscar and Kenneth sold their stock (92 shares each) to Charles and Clifford, respectively, and resigned from the business. Since the latter date Charles and Clifford have held 226 shares each of the capital stock of Nelson. Kenneth and Oscar have been neither officers nor directors since 1951. However, from September 1, 1951, to March 1, 1953, Kenneth had an office at one of Nelson's terminals where as a "free lance" tariff consultant, he served only Nelson, and was paid by Nelson \$15,650 in 1952 and \$13,829 in 1953.

Under a contract of March 2, 1953, after consultation with his accountant and financial adviser, Kenneth agreed to purchase the capital stock of Gilbertville, consisting of 100 [fol. 23] shares, for a net consideration of \$22,447, of which \$10,000 was evidenced by a promissory note signed by him and Oscar. A loan of \$30,000 was secured from a bank on a note signed by the same individuals to help finance the transaction and to furnish Gilbertville with working capital.

Upon the transfer of that stock 51 shares were held by Kenneth, 48 by Oscar, and 1 share by Kenneth's attorney. In March, 1954, Oscar transferred his shares to Kenneth who, in turn, transferred 24 shares each to his wife and to the manager of their terminal at Gilbertville, apparently in name only.

The Bergson Company, organized January, 1953, is a real estate holding company, whose 490 shares of stock are owned in equal amounts by the seven children, and they are its directors. Kenneth is not an officer of Bergson. Of the five terminals utilized by Nelson in its operations, four are leased from Bergson, including a terminal at Rockville-Ellington, Conn., which is also used as the headquarters of both Nelson and Gilbertville. The latter subleases terminal facilities from Nelson at Rockville-Ellington, Newton, Mass., and Woonsocket, R.I., owned by Bergson, and at New York City, owned by other parties. At a garage and repair shop maintained at Rockville-Ellington, Nelson performs about 25 percent of the repair work on the equipment of Gilbertville.

At two of the terminals owned by Bergson, at the one in New York City, and at four other points, Nelson and Gilbertville have the same telephone numbers. The total cost of [fol. 24] leased interterminal telephone lines is \$1,400 a month and Gilbertville pays Nelson \$400 a month as sub-lessee. Nelson occasionally leases equipment from Gilbertville although the latter constantly and frequently leases from a pool of equipment maintained by Nelson. Both draw upon the same group of drivers and information relative thereto, including medical certificates, are maintained in the files of both companies. To the extent they interline, revenues are divided on a fixed percentage basis and Nelson does all of the billing for such traffic. Frequently the same driver will be employed by both companies during the same pay period, and on those occasions where a shipment moves from a point in the territory of one to a point in the territory of the other the same driver and vehicle will perform the through movement under prearranged lease arrangements. The two companies use the same source for accounting and financial advice, each operates to some extent, at least, under managerial direction from officers of the other.

and they are liberal with each other in the settlement of intercompany accounts. There has also been a commingling of traffic of the two carriers in the same vehicles whenever it suits their convenience.

As of March, 1953, Gilbertville had one truck, three tractors, and four trailers, and had a deficit in surplus of \$39,868. As of December 31, 1953, however, it had a net worth of \$18,935. In 1953 Gilbertville's revenues were \$75,489, whereas for the first seven months of 1956 they had increased to \$444,777. Its equipment increased substantially during that period. In 1953 the revenues of Nelson were \$895,774, and for the first seven months of 1956 they were [fol. 25] \$630,607. Under an authority granted by this Commission, Gilbertville, on June 16, 1954, acquired the operating rights of one Louis Marner, doing business as Wolff's Express. In April or May of 1954, Charles Chilberg and Clifford Nelson negotiated for the capital stock of R. A. Byrnes, Incorporated, herein called Byrnes, and upon approval of this Commission, the transaction was consummated August 21, 1956. The general-commodity authority of Byrnes complements that of Gilbertville and by interchange a through service on general commodities can be provided between points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and, on the other, points south thereof to the District of Columbia. Considering all facts of record, we are of the opinion, and find, that Kenneth Nelson was affiliated with Nelson within the meaning of section 5(6) at the time he purchased the stock of Gilbertville, and that the conclusive presumption of section 5(5) applies; we affirm the findings in the prior report, and in the report of the examiner, that the control and management of Nelson and Gilbertville in a common interest has been effected and is continuing in violation of section 5(4) of the act.

It has been consistently found in many reports in proceedings under section 5, involving motor carriers, that a prior unlawful consummation of a transaction for which authority is sought, or the unlawful accomplishment of the control or management in a common interest of the carriers involved, is not an absolute bar to approval of the transaction. The [fol. 26] law violation has been viewed as only one of the ele-

ments to be considered. A similar view has been expressed in determining applications for certificates under sections 207 of the act, past violations of law by such applicants having been considered in appraising their fitness to hold the authority sought. Thus, some applications have been granted under section 5 in spite of the unlawful control, *Baggett—Control—Walker Hauling Co., Inc.*, 65 M.C.C. 522, *Masten Transp., Inc.—Merger*, 70 M.C.C. 421, and *Atlas Van-Lines, Inc.—Control and Merger*, 70 M.C.C. 629, and 75 M.C.C. 175; and some have been denied, *Hughes—Control—M.P. & St. L. Exp., Inc.*, 70 M.C.C. 261, *Deaton Truck Line, Inc.—Pur.—Capitol Freight Lines, Inc.*, 70 M.C.C. 355, and *Woodworth—Purchase—Griffin*, 70 M.C.C. 520. In a recent report on reconsideration, in Finance Docket No. 19159, *Central of Georgia Railway Company Control*, — I.C.C. —, decided November 14, 1958, where we found that the control of the Central of Georgia Railway Company had been acquired by the St. Louis-San Francisco Railway Company in violation of section 5(4), we stated:

We agree with division 4 that such violation is not necessarily a bar to approval of an application under section 5(2), if, upon consideration of all the facts, it clearly appears that the public interest will be served best by such approval. In our opinion, such is not the case here. The public interest is concerned not only with improvements in transportation service, but also with the maintenance of respect for and the observance of the law. If Frisco is permitted to retain the fruits of its unlawful conduct, and we sanction such conduct, which we consider to have been in flagrant disregard of the law, others will be encouraged to pursue a like course and to present a *fait accompli* for our approval. [fol. 27.] Obviously, such is not in accord with the intent of the statute, i.e., that we pass upon 'proposed' acquisitions of control prior to their consummation, including the justness and reasonableness of the terms upon which such control is to be acquired. If the indicated practice were generally followed, our administration of the statute in the public interest would be seriously hindered, if not defeated.

We affirmed, in the foregoing, the views heretofore followed, that law violations are not necessarily a bar to approval of an application, if the public interest will best be served by approval of the transaction presented. In this respect, in the prior report of Division 4, it was stated:

When regulation of motor-carrier transportation under the act was in its earlier stages, there were many instances when transactions under section 5 were approved notwithstanding a showing of law violation, because the paramount public interest warranted approval. Now, after more than 20 years of regulatory experience, a more stringent approach is warranted not as a penalty to these particular respondents, but in recognition that a violation of the law should not be rewarded, and that existing carriers endeavoring faithfully to comply with the law should be encouraged and protected. It should be emphasized that Nelson's and Gilbertville's principals are not new to transportation or to section 5 proceedings. * * * Considering all the circumstances, we are of the opinion that the violations of the law and of the regulations should not be 'blessed' by approval * * * but rather, that respondents should be directed to terminate the unlawful control and management in a common interest.

We have carefully considered the evidence and the pleadings, and find no error in the findings and conclusions in the prior report, or other basis upon which to arrive at a conclusion different than that reached in the *Central of Georgia case*, supra, or to support a finding that the transaction for which authority is sought would be consistent with the public interest under all the circumstances.

We find, in No. MC-F-6099, that the transaction has not been shown to be consistent with the public interest, and that the application accordingly should be denied.

[fol. 28] We further find, in No. MC-F-6178, that the control and management of The L. Nelson & Sons Transportation Co., in a common interest with Gilbertville Trucking Co., Inc., has been effectuated and is continuing in

violation of section 5(4) of the Interstate Commerce Act, and that the respondents The L. Nelson & Sons Transportation Co., Gilbertville Trucking Co., Inc., Charles G. Chilberg, Clifford J. O. Nelson, Greta C. Carlson, and Kenneth A. H. Nelson, participated in the effectuation of such control and management in a common interest, and in its continuance.

An appropriate order, which will deny the application and require the respondents named above to terminate the violation of section 5(4) of the act, will be entered.

COMMISSIONER FREAS, concurring in the result:

I agree with the findings of the report that the control and management of Nelson in a common interest with Gilbertville has been effectuated in violation of section 5(4) of the act that the transaction has not been shown to be consistent with the public interest, and that the application should, therefore, be denied. The latter conclusion is warranted, in my opinion, not so much because of any evidenced disregard of the law, but principally because of a lack of a clear showing that there is a paramount overriding public interest which would best be served by a grant of the approval sought.

[fol. 29] COMMISSIONER HUTCHINSON dissenting:

On the record as a whole I would find the transaction to be consistent with the public interest and affirm the findings in the report of the hearing examiner.

COMMISSIONER MCPHERSON dissenting:

For the reasons set forth in the dissenting expression in Finance Docket No. 19159, *Central of Georgia Railway Company Control*, — I.C.C. — decided November 14, 1958, I would approve the application for control in No. MC-F-6099, and discontinue the investigation in No. MC-F-6178.

COMMISSIONER GOFF dissents.

COMMISSIONERS MITCHELL, ARPAIA, AND WINCHELL, did not participate.

[fol. 30]

APPENDIX "B" TO COMPLAINT

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 9th day of June, A. D. 1959.

No. MC-F-6099

THE L. NELSON & SONS TRANSPORTATION CO.—
CONTROL AND MERGER—GILBERTVILLE
TRUCKING CO., INC.

No. MC-F-6178

THE L. NELSON & SONS TRANSPORTATION CO.—
INVESTIGATION OF CONTROL—GILBERTVILLE
TRUCKING CO., INC.

Further investigation of the matters and things involved in these proceedings having been made, and the Commission, on the date hereof, having made and filed its report on reconsideration, which report, and the prior report of Division 4, dated February 26, 1958, are made a part hereof:

It is ordered. That the application in No. MC-F-6099 be, and it is hereby, denied.

It is further ordered. That, in No. MC-F-6178, respondents The L. Nelson & Sons Transportation Co., and Gilbertville Trucking Co., Inc., both corporations, and Charles G. Chilberg, Clifford J. O. Nelson, Greta C. Carlson, and Kenneth A. H. Nelson, individuals, and each of them, be, and they are hereby, required to terminate the violation of the provisions of section 5(4) of the Interstate Commerce Act, found in the said report to have been accomplished and to be continuing through the control or management of The L. Nelson & Sons Transportation Co. of Ellington, Conn., in a common interest with Gilbertville Trucking Co., Inc., of Gilbertville, Mass.

It is further ordered, That the said respondents be, and they are hereby, required to divest themselves of any and all interest which they may have in the capital stock of Gilbertville Trucking Co., Inc., provided, however, that in such divestment, none of the shares of stock shall be sold or transferred directly or indirectly to any stockholder, officer, director, employee, or agent of, or anyone otherwise directly or indirectly affiliated with or connected with or under the control or influence of The Nelson & Sons Transportation Co., or to any corporation in which it is financially interested or with which it is affiliated, or to any stockholder, officer, director, or employee of any such corporation, or its subsidiary or affiliated companies.

And it is further ordered, That The L. Nelson & Sons Transportation Co., and Gilbertville Trucking Co., Inc., both corporations, and Charles G. Chilberg, Clifford J. O. Nelson, Greta C. Carlson, and Kenneth A. H. Nelson, individuals, shall report to this Commission, within 60 days from the date hereof, the steps taken by each of them to [fol. 31] comply with the requirements of this order with respect to termination of the said violation of section 5(4) of the act.

By the Commission.

HAROLD D. MCCOY,
Secretary.

(SEAL)

[fol. 32]

APPENDIX "C" TO COMPLAINT

[Stamp—Date of service Feb. 20, 1960]

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 15th day of February, A. D. 1960.

No. MC-F-6099

THE L. NELSON & SONS TRANSPORTATION CO.
CONTROL AND MERGER—GILBERTVILLE
TRUCKING CO., INC.

No. MC-F-6178

THE L. NELSON & SONS TRANSPORTATION CO.
INVESTIGATION OF CONTROL—GILBERTVILLE
TRUCKING CO., INC.

Upon consideration of the record in the above-entitled proceedings, and of the petition filed August 17, 1959, by The L. Nelson & Sons Transportation Co., and Gilbertville Trucking Co., Inc., seeking reopening and reconsideration, and approval of the application in No. MC-F-6099 and discontinuance of the investigation in No. MC-F-6178, or, alternatively, that the order of divestment be modified; and of the replies to the said petition:

It is ordered, That the petition be, and it is hereby, denied, for the reason that the material matters set forth in the petition have been considered by the Commission, that the findings to which the petition is directed are supported by the record, that the contention that the requirements of the Administrative Procedure Act have not been met is without merit, that no showing has been made that petitioners have been harmed by recall of the proceedings from Division 4 by the Commission, and that reconsideration is not warranted.

It is further ordered, That the order of June 9, 1959, be, and it is hereby, made effective 15 days from the date of service of this order.

By the Commission.

HAROLD D. MCCOY,
Secretary.

(SEAL)

[fol. 33]

APPENDIX "D" TO COMPLAINT

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 5th day of July, A. D. 1960.

No. MC-F-6099

THE L. NELSON & SONS TRANSPORTATION CO.—
CONTROL AND MERGER—GILBERTVILLE
TRUCKING CO., INC.

No. MC-F-6178

THE L. NELSON & SONS TRANSPORTATION CO.—
INVESTIGATION OF CONTROL—GILBERTVILLE
TRUCKING CO., INC.

No. MC-42871 (Sub-No. 3)

THE L. NELSON & SONS
TRANSPORTATION COMPANY

Upon consideration of the record in the above-entitled proceedings in Nos. MC-F-6099 and MC-F-6178, of the petition of The L. Nelson & Sons Transportation Co., dated March 7, 1960, for cancellation of its outstanding certificate in No. MC-42871 (Sub-No. 3), and of the reply to such petition, dated March 23, 1960, filed by the Bureau of Inquiry and Compliance, Interstate Commerce Commission; and

It appearing, That the requested cancellation of petitioner's outstanding certificate in No. MC-42871 (Sub-No.

3), is predicated upon the concurrent vacation by this Commission of its orders of June 9, 1959 and February 15, 1960, entered in the proceedings in Nos. MC-F-6099 and MC-F-6178, which required, among other things, that petitioner and the persons in control thereof divest themselves of their interest in the capital stock of Gilbertville Trucking Co., Inc.:

It further appearing, That petitioner has shown no good cause for vacation of the aforesaid orders of June 9, 1959 and February 15, 1960, and that the violation of section 5(4) found in the report of June 9, 1959, is continuing:

It is ordered, That the petition be, and it is hereby, denied.

And it is further ordered, That the order of March 11, 1960, which stayed the effectiveness of the orders of June 9, 1959 and February 15, 1960, pending determination of the instant petition, be, and it is hereby, vacated, and that the effectiveness of the orders of June 9, 1959 and February 15, 1960, be, and they are hereby, reinstated, effective 15 days from the date hereof.

By the Commission.

HAROLD D. McCoy,
Secretary

(SEAL)

APPENDIX "F" TO COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. MC-F-6099¹THE L. NELSON & SONS TRANSPORTATION CO.—
CONTROL AND MERGER—GILBERTVILLE
TRUCKING CO., INC.

Decided

- 1 In No. MC-F-6099, acquisition by The L. Nelson & Sons Transportation Co., of control of Gilbertville Trucking Co., Inc., through acquisition of its capital stock, and merger of its operating rights and property into the former for ownership, management, and operation; and acquisition by Charles G. Chilberg and Clifford J. O. Nelson of control of the operating rights and property through the control and merger, approved and authorized, subject to conditions.
- 2 In No. MC-F-6178, upon investigation, respondents found to have effectuated or participated in effectuating, and to be continuing, control and management of Gilbertville Trucking Co., Inc., and The L. Nelson & Sons Transportation Co. in a common interest in violation of section 5(4) of the Interstate Commerce Act. Investigation discontinued subject to condition.

Mary E. Kelley for applicants in No. MC-F-6099 and respondents in No. MC-F-6178.

Francis E. Barrett; Francis E. Barrett, Jr., Hugh M. Joseloff and Arthur J. Piken for protestants in No. MC-F-6099 and interested parties in No. MC-F-6178.

¹ This report embraces also No. MC-F-6178, The L. Nelson & Sons Transportation Co.—Investigation of Control—Gilbertville Trucking Co., Inc.

Robert G. Bleakney, Jr., William O. Keenan, James G. Lane, T. W. Marrett, and Kenneth B. Williams for interested parties in Nos. MC-F-6099 and MC-F-6178.

Ellis T. Gregory, Nell Guin and Herman F. Mueller for Bureau of Inquiry and Compliance, Interstate Commerce Commission.

REPORT PROPOSED BY WALTER L. BAUMGARTNER, EXAMINER

The L. Nelson & Sons Transportation Co., a corporation of Ellington, Conn., and Gilbertville Trucking Co., Inc., of Gilbertville, Mass., herein called Nelson and Gilbertville, respectively, by joint application filed October 6, 1955, in No. MC-F-6099 seek authority under section 5 of the [fol. 35] Interstate Commerce Act, for (1) acquisition by the former of control of the latter through acquisition of its shares of stock by exchange, and (2) for the merger of the operating rights and property of the latter into the former for ownership, management, and operation. Charles G. Chilberg of Rockville, Conn., and Clifford J. O. Nelson of Dover, Mass., who are officers of, and control, Nelson through ownership in equal amounts of 91.50 percent of its capital stock, also seek authority under the same section to acquire concurrent control of the operating rights and property through the transaction.

By order entered December 20, 1955, in No. MC-F-6178, an investigation was instituted under section 5(7) of the Act, for the purpose of inquiring into and concerning the possibility that the control or management of Gilbertville in a common interest with Nelson may have been effectuated, and may be continuing, in violation of section 5(4) of the Act, and if such violations are found, of entering an order requiring the participants therein to take such action as may be necessary to prevent further such violations. Nelson, Gilbertville, Charles G. Chilberg, Clifford J. O. Nelson, Greta C. Carlson and Kenneth A. H. Nelson were named as respondents in the proceeding, herein sometimes referred to as the investigation or investigation proceeding. By the same order, the investigation proceeding and the application were assigned for concurrent hearing and

determination on a joint record. Since they are interrelated, they will be the subject of a single report.

[fol. 36] At the hearing thirteen motor common carriers of property² and the eastern territory railroads appeared and participated in opposition to the application and as interested parties in support of the investigation. The applicants-respondents, each of the motor carriers and the Commission's Bureau of Inquiry and Compliance introduced evidence. The railroads limited their participation in the hearing to the cross-examination of applicants' and respondents' witnesses.

The carrier applicants-respondents operate more than twenty motor vehicles.

They press on brief objections made at the hearing to various rulings of the examiner. Objection was made to his ruling on the order of presentation whereby applicants were required to go forward with the evidence in support of the application prior to the presentation of evidence in the investigation proceeding. It is their position that, since Nelson's fitness to acquire and exercise the Gilbertville operating rights is involved in both proceedings, they were entitled to hear the evidence against them in the investigation proceeding first so that they might be apprised of the evidence against them before having to meet it in the application proceeding. They also claim that, as a result of the ruling, erroneous rulings were made upon improper efforts during the cross-examination of applicants' witnesses to elicit testimony helpful to the investigation. The [fol. 37] examiner's ruling with respect to the order of presentation was in harmony with rule 1.74 of the Commission's General Rules of Practice prior to, and as amended, January 8, 1957, effective March 1, 1957, reading in pertinent part as follows:

² Adley Express Co., Alvin R. Holmes d/b/a Holmes Transportation Service and/or Jones Express, Downing & Perkins, H. T. Smith Express Co., Hemingway Bros. Trucking Co., Jackson Transportation Corp., Lombard Bros., Inc., M & M Transportation Company, National Transportation Co., Newbergh Transfer, Inc., P. B. Mutrie Motor Transportation, Inc., Taylor's Express Co., and Westchester Motor Lines, Inc., herein called Adley, Holmes, Downing, Smith, Hemingway, Jackson, Lombard, M & M, National, Newbergh, Mutrie, Taylor and Westchester, respectively.

" * * * In informal-complaint, application, and investigation proceedings, complainant, applicant, and respondent, respectively, shall open and close at the hearing. * * * The foregoing order of presentation may be varied by the (hearing) officer, who shall also designate the order of presentation in any other type of proceeding, of any other party to any proceeding, or of parties to several proceedings being heard upon a consolidated record."

The examiner's rulings upon objections made to questions and upon the admissibility of evidence during such cross-examination have been carefully examined and found proper. In any event, if erroneous in any respect, the rulings to that extent were harmless error. Since the investigation is not a criminal proceeding but civil in nature and conducted to enable the Commission to issue such corrective orders as may be necessary and appropriate to secure compliance with the Interstate Commerce Act, and since the investigation involved matters bearing upon the fitness of the applicant Nelson, an issue upon which applicants have the burden of proof and upon which opposing carriers have the right to submit evidence in rebuttal, in the application proceeding, and since applicants-respondents have failed to establish that they were in any way prejudiced by the ruling on the order of presentation, there is no basis for a finding that the examiner abused his discretion therein and the Commission should overrule the objections thereto.

Applicants-respondents also assert error in various rulings upon their objections to questions propounded by the Bureau of Inquiry and Compliance to two witnesses produced by it upon the ground that the questions called for hearsay statements. The two witnesses were employees [fol. 38] of the Commission who, during the course of an investigation of the operations of Gilbertville and Nelson, were given certain information with respect thereto in response to oral inquiries, by a Gilbertville director and terminal manager and by Kenneth Nelson, president of Gilbertville, and by Clifford Nelson and Charles Chilberg, secretary and president, respectively, of Nelson. All of these gentlemen were actively engaged in the performance

of managerial functions, of one or both of the carriers. Over objection, one of the witnesses was permitted to testify to statements made to him by the terminal manager as to his connections with Gilbertville his previous employment by Nelson, his receipt from Kenneth of 24 shares of Gilbertville stock, the practices followed by the two carriers in effecting through movements of shipments under equipment leases between them and the repair of Gilbertville equipment in Nelson's shop at Ellington. The facts respecting the declarant's relationship and connection with the two carriers were already of record through other evidence. The equipment leasing and repair practices were matters within the scope of his employment concerning which, as an agent, he could speak with authority and binding effect upon his employer, a party to both proceedings here. His statements were admissions against interest or voluntary acknowledgements made by Gilbertville through its agent within the scope of his employment. 31 C. J. S., paragraphs 270, 271, and 272, pp. 1622-1024; *Pan American Petroleum & T. Co. v. U. S.* (1927), 273 U. S. 456, 499; *Takahashi v. Hecht Co.* (1931), 50 F. 2d 326, 328. The repetition on the witness stand of information elicited by the witnesses from Kenneth and Clifford Nelson and Charles Chilberg was clearly admissible hearsay since it disclosed admissions [fol. 39] against interest by parties to the proceedings who were also officers and agents of the corporate parties, 31 C. J. S., paragraph 354, p. 1128; *Pan American Petroleum & T. Co. v. U. S.*, *supra*.

Error is also claimed in the examiner's rulings preventing testimony of the same two witnesses as to the provisions of Commission regulations and the law applicable to acts of the respondents alleged to be unlawful. The testimony of a witness as to what the domestic as distinguished from foreign law is wholly incompetent. The courts, and, hence, the Commission must take judicial and official notice of Federal statutes and agency regulations. The sources are open to the courts and the Commission and it is their duty to hear the evidence and determine for themselves the law applicable thereto. *U. S. v. Hoblitzel* (1932), 2 F. Supp. 832, 836; *W. U. Tel. Co. v. White* (Tex. 1914), 162 S. W.

905, 909; *Owens v. National Hatchet Co.* (Iowa 1909), 121 N. W. 1076, 1079; 44 U. S. C. 307; Rule 1.75, General Rules of Practice.

On November 12, 1954, one of the witnesses referred to above, while visiting Gilbertville's terminal at Newton, Mass., in the pursuance of his duties, discovered and made a copy of a teletype message made and received at the terminal. It was received in evidence as an exhibit after an explanation of its source and of its contents by the witness. It related to the handling of Gilbertville freight and the use of its vehicles. Objection was made both to its reception in evidence and to the witness's explanation of its contents on the ground that its contents were not clear, etc. A portion of its text will be set out later in this report. [fol. 40] Suffice it to say at this point that an analysis of it makes its meaning clear and establishes its relevancy. The objection made goes to its weight rather than its admissibility or competence.

Error by the examiner is also claimed by a ruling excluding the testimony of an accountant, called as a witness by applicants, with respect to Gilbertville's operating revenues for periods prior to Kenneth Nelson's purchase of it. Objection was sustained on the ground that the accountant not having compiled the figures and not having checked them against the underlying data from which they were taken was not qualified to testify as to their accuracy and significance particularly on cross-examination. On brief, applicants-respondents rely upon rule 1.79 of the General Rules of Practice which embodies in part the "shop-book" rule of evidence relating to the admissibility of any writing or record made as a memorandum or record of any transaction if made in regular course of business at the time of the transaction or shortly thereafter, etc. As no proper foundation had been laid to render the testimony admissible, the ruling was clearly correct, and if not, it was harmless error, since the relevance or materiality of the testimony sought is not apparent and was not shown.

Two motions were filed by applicants-respondents requesting that parts of two briefs filed by motor carriers opposing the merger be stricken. The Commission is re-

quested to strike two parts of the brief filed in behalf of Mutrie, Holmes, Newburgh and Taylor, each of which is asserted to contain "libelous" statements with reference to applicants-respondents wholly lacking in evidentiary support. In answer, counsel for Mutrie et al. request that the Commission strike from the brief any comment which it feels is in the slightest degree improper or in contravention [fol. 41] of any rule of the Commission. Rule 1.4(d) of the General Rules of Practice provides that the Commission may order any redundant, immaterial, impertinent or scandalous matter stricken from any pleading, document or paper filed with it. The portions of the brief under criticism contain arguments made in good faith and evolved in the author's consideration of matters in evidence. Not all may agree that his reasoning or deductions are sound, but they appear to be permissible and plausible. The slight amount of intemperate language may be ascribed to over-zealousness in argument which usually does not generate conviction and sometimes defeats its own purpose. The motion to strike should be denied.

The second motion is directed to the brief filed in behalf of Adley, M & M, and Hemingway and requests the striking of three portions thereof. The first two are challenged as efforts to import into the record or to draw attention to matters not of record. Since such matters have in no way been shown to be relevant or material to the issues here, they will be disregarded even though not stricken. The third portion sought to be stricken appears to be legitimate argument based upon facts in evidence. Much of the considerations urged in support of the motion appears to be in the nature of a reply to the brief and may not be weighed since reply briefs were not contemplated here. The motion should be denied.

BACKGROUND AND CORPORATE ORGANIZATIONS

Mrs. Linnea Nelson, married twice, was the mother of seven children, viz., Charles C., Oscar H., and Howard Chilberg, Kenneth A. H. and Clifford J. O. Nelson, Greta C. Nelson Carlson and Ruth Nelson Widham Nyberg, Mrs. Nelson, in partnership with two of her sons, Charles and

[fol. 42] Oscar Chilberg, inaugurated the Nelson transportation business in 1930. The L. Nelson & Sons Transportation Co. was incorporated under the laws of Connecticut on February 7, 1948. Of the 500 shares authorized, all common, 496 were issued to her and one share each to four of her sons, viz., Charles and Oscar Chilberg and Clifford and Kenneth Nelson. On May 14, 1948, she transferred 49 of her shares to each of those sons, thus increasing their holdings to 50 shares each, and reducing hers to 300 shares. In January 1949, she was president and treasurer, Oscar vice-president, Kenneth assistant treasurer, and Clifford secretary. On January 5, 1950, Mrs. Nelson died, testate, devising 42 shares of her stock to each of her seven children (total 294). The other six shares were purchased from the estate by Nelson and held as treasury stock. During the administration of her estate, her 300 shares were voted under proxy by Charles, who was one of the three executors.

On June 30, 1951, Oscar sold his 50 shares to Charles and resigned as an officer and director of the corporation. On September 22, 1951, Kenneth sold his 50 shares to Clifford and likewise resigned as an officer and director. Neither has since been an officer or director of the company. Howard, who was employed as office manager, severed his employment in 1951.

Stock distribution from Mrs. Nelson's estate was made on January 24, 1953, at which time Kenneth transferred his 42 shares to Clifford in accordance with his agreement to sell made September 22, 1951. Oscar sold his 42 shares to Charles. Shortly thereafter Howard Chilberg and Ruth Nelson Nyberg sold their respective shares in equal amounts to Charles and Clifford. Hence, ever since then, Charles and [fol. 43] Clifford have each held 226 shares and Greta Nelson Carlson 42 shares. Charles is now president, treasurer and a director, Clifford secretary, assistant treasurer and a director and Greta Carlson a director.

R. A. Byrnes, Incorporated, formerly of Mullica Hill, N. J., is a motor common and contract carrier controlled through stock ownership by Charles Chilberg and Clifford Nelson pursuant to authority granted by the Commission on August 21, 1956, in MC-F-5749. Its books and records are kept at, and its operations are directed from, the Elling-

ton-Rockville, Conn., terminal where Nelson and Gilbertville are headquartered.

Gilbertville is a Massachusetts corporation organized June 26, 1940, with an authorized capital of 100 shares of no-par common stock. For corporate purposes, its principal place of business is registered as Gilbertville, Mass. In January, 1953, all of the stock was owned by Wilfred Yachon. At that time, Kenneth began negotiations for, and sought the advice of his accountant and financial adviser with respect to, their purchase. By a contract, dated March 2, 1953, Kenneth agreed to buy the stock for \$35,000, out of which were paid in accordance with the contract, all liabilities of the corporation in excess of its good current assets. Yachon realized a net of \$22,447, of which \$12,447 was paid him in cash and \$10,000 by a promissory note signed by Kenneth Nelson and Oscar Chilberg. The note was payable at the rate of \$500 per quarter, interest at 4%, and secured by an escrow of the stock purchased. To assist in financing the transaction, \$30,000 was borrowed from a bank upon a promissory note signed by Kenneth and Oscar. Of the amount so borrowed, \$5,000 was advanced to Gilbertville by Kenneth for working capital. The \$10,000 note to Yachon was paid off within a year by checks drawn on [fol. 44] Gilbertville, signed by Kenneth. The \$30,000 borrowed from the bank had not been repaid as of the time of the hearing. The 100 shares were transferred to Kenneth who in turn transferred one qualifying share to his attorney and 48 to Oscar. Kenneth became president, Oscar treasurer, and the attorney, clerk. All became directors. In March of 1954, Oscar caused transfer of his 48 shares to Kenneth who then transferred 24 to his wife and 24 to John Kashady, Gilbertville terminal manager at Gilbertville, to enhance his prestige. Oscar resigned as treasurer and director, Kenneth became treasurer in addition to his presidency and the four stockholders became directors. Neither Kenneth's wife nor Oscar nor Kashady paid anything for the stock transferred to them. Oscar was not a party to the purchase contract, never took an active part in the affairs of the corporation, invested no money therein and received no salary or other compensation from it. Kenneth

testified, in effect, that he is the beneficial owner of the stock and can deliver it to Nelson if the merger is approved.

The Bergson Company, herein called Bergson, an outgrowth of the estate of Linnea Nelson, is a real estate holding company organized in January, 1953. Each of her children holds 70 of the 490 outstanding shares of the company. Oscar is president, Charles is vice-president and treasurer, and Clifford is secretary. All of the children serve as directors and receive \$360 per year each as salary. No dividends are paid. Certain of its properties, approximately two-thirds in value and 10 percent in area, are leased to Nelson and used by it and, under sublease, by Gilbertville as will be more particularly noted later.

[fol. 45]

OPERATING AUTHORITIES INVOLVED IN MERGER

On April 27, 1955, in No. MC 42871, Sub. 3, a certificate was issued to Nelson authorizing operation in interstate or foreign commerce as a motor common carrier of (a) materials used in the manufacture of cloth, waste materials resulting therefrom, and supplies and materials used in connection with transportation or processing of such commodities, when moving to or from places of processing, except liquid commodities, in bulk, in tank vehicles, over irregular routes, (1) between Hudson, North Chelmsford, Norton, Lowell, Lawrence and Marlboro, Mass., on one hand, and, on the other, Manchester, Concord, and Somersworth, N. H., and points in Providence and Bristol Counties, R. I.; (2) between Providence, Woonsocket and Pawtucket, R. I., Hartford, Hazardville and Somersville, Conn., and points in Massachusetts east of the Connecticut River, on the one hand, and on the other, New York, N. Y., Jersey City, Passaic, Newark and Camden, N. J., Philadelphia, Pa., and points in Pennsylvania within 30 miles of Philadelphia; (3) between Hazardville, on the one hand, and, on the other, Millbury and East Douglas, Mass.; (4) from Philadelphia and Camden to points in Tolland and Hartford Counties, Conn., on and north of U. S. Highway 6; and (b) empty containers used in transporting the commodities named above, over irregular routes from the said points in

Tolland and Hartford Counties to Philadelphia and Camden. Nelson also holds intrastate general commodity irregular route authority in Connecticut and Massachusetts.

On April 1, 1941, in No. MC-60186, a certificate was issued to Byrnes authorizing operation in interstate or foreign commerce as a motor common carrier over irregular [fol. 46] routes (a) of general commodities, except explosives, poles, canned foods and commodities used in canning or processing food, (1) between New York City, on the one hand, and, on the other, Philadelphia and points in Pennsylvania within 25 miles thereof and those in New Jersey; (2) from points in New Jersey to Philadelphia and points within 25 miles thereof; (3) from New York City and points in New Jersey to those in portions of Delaware, Maryland and Virginia and all of the District of Columbia; (b) of fertilizer from Baltimore, Md., and Philadelphia to points in New Jersey; (c) of oil in containers from Claymont, Del., to Camden; (d) of produce, except that used in processing food, from Gloucester, Salem and Cumberland Counties, N. J., to the District of Columbia and to certain portions of Pennsylvania and New York. On April 25, 1941, in No. MC-93421, a permit was issued to Byrnes authorizing operation in interstate or foreign commerce as a contract carrier over irregular routes, (a) of commodities used in canning or processing food from New York City, Philadelphia and Baltimore to Swedesboro, N. J.; and (b) of canned goods from Swedesboro to Massachusetts, Rhode Island, Connecticut, Delaware, Maryland and the District of Columbia, Virginia within 25 miles of the District, and portions of Pennsylvania and New York. Upon Byrnes application in No. MC-93421 Sub-1, the Commission by a report, dated August 16, 1956, ordered, among other things, [fol. 47] the enlargement of the operating authority above described to include "canned goods from Philadelphia to Swedesboro" and found that the holding by Byrnes of a permit containing the operating authority as so enlarged concurrently with the holding by Nelson of the certificate in No. MC-42871 will be consistent with the public interest. *R. A. Burnes, Inc.—Ext.—Canned Goods*, 68 M.C.C. 57.

On February 25, 1955, in No. MC-87431, a consolidated certificate was issued to Gilbertville authorizing operation

in interstate or foreign commerce as a common carrier of (a) general commodities, with the usual exceptions, over 17 described regular routes between Lowell, Mass., and Boston, Mass., serving 31 intermediate, and 5 off-route, points in Massachusetts, (b) the same commodities over irregular routes between points in Massachusetts, (c) the same commodities over irregular routes (1) between the Town of Hardwick, Mass., on the one hand, and, on the other, New York City and points in New York and New Jersey within 20 miles of New York City, (2) between Palmer, Mass., and points in Massachusetts within 10 miles of Palmer, on the one hand, and, on the other, points in Connecticut and Rhode Island, (3) between Palmer and Monson, Mass., on the one hand, and, on the other, points in Massachusetts within 5 miles of Palmer and Monson, (d) of sanitary napkins, facial tissues, and paper boxes over regular routes between New York City and Wilmington, Del., serving Philadelphia and [fol. 48] the off-route point of Rockland, Del., and (e) of sanitary napkins, facial tissues, and machinery, over irregular routes, from Hardwick, Mass., to Boston, New York City and points in New York and New Jersey within 20 miles of New York City, (f) materials used or useful in the manufacture and sale of sanitary napkins and facial tissues, in the reverse direction, (g) pickled skins from New York City to Ipswich and Peabody, Mass.; (h) pulpboard from Boston to Hardwick, (i) fertilizer and fertilizer materials from Portland, Conn., to Hardwick and points in Massachusetts within 15 miles of Hardwick, (j) lime and limestone products from Adams and Lee, Mass., to Hamden, East Hartford, and Hartford, Conn., Providence and Woonsocket, R. I., New York City and points in New Jersey within 10 miles of New York City, (k) agricultural commodities from Hardwick to Melrose, Conn., and New York City, (l) household goods between Palmer and points in Massachusetts within 10 miles of Palmer, on the one hand, and, on the other, points in Vermont, and between Hardwick and points in Connecticut, New Jersey, New York and Rhode Island; and (m) livestock between Palmer and points in Massachusetts within ten miles thereof, on the one hand, and, on the other, points in Vermont. The operating authority described in (a) and (b) above

[fol. 49] was transferred to Gilbertville for \$7,500 cash pursuant to a purchase agreement by Lewis R. Marmer on August 12, 1954, under approval given in No. MC-FC-57090.

THE MERGER AGREEMENT

Under the terms of the agreement dated August 18, 1955, between Kenneth Nelson and Gilbertville on the one hand and Nelson on the other, reciting a mutual desire to merge the respective motor transportation businesses of the two carriers, Kenneth would within 60 days after the effective date of the final order of the Commission approving the transaction, transfer to Nelson all of the shares of Gilbertville stock in full consideration for which Nelson would transfer to Kenneth as many shares of Nelson stock as may be due him based on the then net book value of the respective corporations after provision for Federal and State corporation taxes as of the date of the transfer. It was recognized and acknowledged in the agreement that upon that basis, if consummation had been effected on May 31, 1955, the relationship of the net book values were such that Kenneth would have received 85 shares of Nelson stock for his 100 shares of Gilbertville stock. An exhibit in evidence shows that if consummation had taken place on [fol. 50] July 31, 1956, Kenneth would have received only 78 shares of Nelson stock. It was further agreed that as soon after approval of the transaction by the Commission as practical Nelson would seek authorization from the proper authorities to increase its capital stock by an amount necessary to carry out the agreement. Each corporation agreed to an audit of its books by the other to enable computation of the respective book values of their shares. It was further agreed that any party to the agreement whose rights would be diminished or obligations increased by compliance with any condition or limitation which the Commission might attach to its approval of the transaction may terminate the agreement upon proper written notice to the other party within 10 days after receipt of the final order of the Commission. Gilbertville agreed to cooperate in the preparation and filing of the "application for merger

of the properties of Gilbertville and Nelson." While the agreement contains no provision for the assumption by Nelson of Gilbertville's liabilities, it was represented at the hearing and is the understanding of the parties that it is to do so.

FACILITIES AND OPERATIONS

As of July 31, 1956, Nelson owned and operated 14 trucks, 61 tractors, and 83 trailers. On the rare occasions when it may be necessary to augment its fleet, it leases equipment from Gilbertville. Nelson has 110 employees: [fol. 51] 10 office employees, 5 terminal managers, 5 dispatchers, 6 mechanics, 3 utility men, 2 salesmen and 79 drivers. It maintains five terminals: one each at Rockville-Ellington, Conn., Newton, Mass., Woonsocket, R. I., Long Island City (which is within New York City), and Philadelphia. All of the terminals, except that at Long Island City, are leased from Bergson at a total monthly rental of \$675 or \$8,100 per year. Occupancy of the Long Island terminal is shared, without assignment of specific space, with Smith & Jordan a motor carrier from which Nelson rents space, Gilbertville and Byrnes. The premises at Rockville-Ellington consists of a yard, a two-story building the first floor of which is occupied by Nelson and Byrnes as headquarters and the second floor of which is occupied by Gilbertville for similar purposes, and another building in the rear used as a terminal. Nelson maintains a garage and repair shop on the premises where five mechanics are employed. It employs a dispatcher at each terminal, with instructions to dispatch only its equipment and drivers. It leases, and shares with Gilbertville and Byrnes the use of, telephone lines connecting all of the terminals and Bridgeport, N. J.

Under temporary authority from the Commission, Charles Chilberg and Clifford Nelson assumed control of Byrnes on August 12, 1954, and have been operating it since then.

Nelson renders overnight service between its New England points and those in the areas in New York, New Jersey and Pennsylvania it is authorized to serve. Over 75 percent of its total traffic is interstate and 70 to 75 percent

is truckload. About 8 percent in dollar volume is inter-
[fol. 52] lined with Gilbertville and 15 to 20 other carriers,
of which approximately 6 operate in the same area as
Gilbertville. Only 2 to 3 percent is interlined with Gilbert-
ville.

The operations of the latter are chiefly irregular route
in the performance of call-on-demand overnight service.
Its interstate traffic preponderates. It endeavors to observe
its Hardwick and Palmer gateways in accordance with its
operating authority. About 70 to 75 percent of its operat-
ing revenues are derived from business local to its lines
and about 25 to 30 percent from interline traffic. Interline
is made with approximately 50 motor carriers, including
Nelson and Byrnes. Divisions of revenues with carriers
with which interchanges are frequent is upon a fixed per-
centage basis regardless of the length of the hauls as be-
tween the respective carriers. Thus the division with
Nelson is 60 percent to Nelson and 40 percent to Gilbert-
ville. With respect to some other carriers, the division is
upon a mileage prorate basis.

When Kenneth took over in March 1953, Gilbertville had
one truck, three tractors and four trailers. As of July 31,
1956, it had 15 trucks, 12 tractors and 8 trailers with a
depreciated ledger value of \$106,828. Except as to four
used tractors purchased from Nelson in October, 1954, for
\$200 each (depreciated on Nelson's books to \$100 each) all
additions to equipment were new units. Gilbertville aug-
ments its fleet almost daily by leasing equipment in vary-
ing amounts from Nelson. It has a terminal at Gilbertville,
Mass., and, in conjunction with Nelson, one each at
Rockville-Ellington, Newton, Woonsocket and New York
City, at each of which it provides collection-and-delivery
service on less-than-truckload shipments. About three
units per day are used in over-the-road operation between
New York City and Massachusetts points. At each termi-
[fol. 53] nal, except Rockville-Ellington, it employs a ter-
minal manager, and at Rockville-Ellington and New York
City, dispatchers. In all, it employs 71 persons: 53 drivers,
4 terminal managers, 3 dispatchers and 10 office employees.
Its principal bookkeeping and transportation records are
kept at the Rockville-Ellington headquarters.

INTERRELATIONS OF THE APPLICANTS

Although Kenneth Nelson disposed of his stock in, and resigned as an officer of Nelson in September, 1951, he continued to have an office on Nelson's premises at Rockville-Ellington. As a "free lance" tariff consultant, he rendered bills to, and was paid periodically by, Nelson in the total amounts of \$15,650 in 1952, and \$13,829 in 1953. From March of 1953, he was in control of and operated Gilbertville. For that year, its administrative and general expense amounted only to \$4,389. For 1954, such expense jumped to \$34,027 and for 1955, to \$40,124. On their visit to Nelson's office at Rockville-Ellington in November, 1954, two employees of the Commission engaged in investigation observed Kenneth engaged in activities believed to be in furtherance of Nelson's business. Among other things, they noticed him at a desk answering telephone calls, issuing orders over an intercommunication system, and operating a teletype machine. At that time Nelson's terminals were equipped with intercommunicating teletype machines. Kenneth tore two to three yards of the teletype tape covered with messages of the machine and folded it. About 20 to 30 minutes later, one of the Commission's men requested production of the tape for inspection and was told by Kenneth that he had destroyed it. Another such request made after exhibiting to him a copy of Commission regulations requiring preservation of carrier teletype messages for three years, elicited the same response. Upon inquiry addressed that day to Clifford Nelson, he offered no explanation of Kenneth's activities in the Nelson office. Some time during the ensuing year, interterminal telephone lines had been substituted for the teletype service because, Kenneth explained, the latter was found to be very slow and required the use of a skilled operator.

John Kashady, Gilbertville's director and terminal manager at Gilbertville, Mass., had been employed by Nelson for 15 years prior to his connection with Gilbertville.

On November 12, 1954, one of the Commission's employees found at the Newton terminal occupied jointly with Nelson, a record of teletype messages transmitted apparently by Clifford Nelson from Rockville-Ellington giving

instructions to some one at the Newton terminal. In substance, they and the answers were as follows:

Oh, don't tell me a truck is going to come home empty. Over. Not at all, will have enough freight and could have more. Over. OK, make sure that any Gilbertville freight is in sealed envelopes and driver doesn't know he has it. That goes for Woonsocket. I will tell him also. How about Friday. Over. ***** OK. Make sure you send the mats on as the truck will be there first shot. Also put on a Gilbertville bill. And a lease too. No. Certainly not. It is only 4 bales. That isn't all the truck has, is it? No. OK. I said to put the pro in a sealed envelope. You can only use a lease when the whole thing is. Yes, I get it. I made out a lease for the oil load and had Rose with a tractor already leased with signs.

The signs presumably referred to the placards required on leased vehicles by Commission regulations to show ownership and leasee.

On November 8, 1955, the Commission employee again visited the Newton terminal and there observed a Nelson truck under lease to Gilbertville. The load included 14 bales of silk for which there were no shipping papers. Clifford Nelson being present, this was called to his attention, whereupon he called New York and thereafter a Gilbertville freight bill covering the silk was prepared.

[fol. 55] Terminal and office facilities at Rockville-Ellington, Woonsocket and Newton, owned by Bergson, are jointly used by Nelson and Gilbertville; the former as primary lessee and the latter as a sublessee of the former. For these three and the terminal at Philadelphia, occupied only by Nelson, it pays Bergson total rentals of \$8,100 annually. The terminal space at New York, rented by Nelson from another carrier, is also jointly used by Nelson, Gilbertville and Byrnes. Monthly rentals paid are as follows:

	Since 1-1-1956		Prior to 1-1-1956	
	Nelson to landlord	Gilbert- ville to Nelson	Nelson to Bergson	Gilbert- ville to Nelson
Long Island City	\$500	\$250		Same
Rockville-Ellington	\$275	\$100	\$275	\$50
Woonsocket, incl. use of telephone	100	100	100	25
Newton, incl. use of telephone	100	100	100	25

At Long Island City, Woonsocket, Newton, Philadelphia, Boston, Lowell, and Worcester, Nelson and Gilbertville have the same telephone numbers. The total costs of the leased interterminal telephone lines and the listings at the various terminals are approximately \$1,100 per month, paid by Nelson and \$400 of which is reimbursed to it by Gilbertville. At Rockville-Ellington, the same premises are occupied by Nelson, Gilbertville and Byrnes as headquarters and a terminal.

In October, 1954, Nelson sold to Gilbertville four tractors at \$200 each which had already been depreciated on Nelson's books to a salvage value of \$100 each. At another time, Nelson sold to Gilbertville two trucks.

Gilbertville's fleet is continually augmented by vehicles leased from Nelson. It usually has about three trucks and two to three tractors on term leases (30 days or more) from [fol. 56] Nelson; and, in addition, it usually leases from Nelson on a trip-lease basis from one to six complete units (tractors and trailers) and a couple of trailers each day. On rare occasions, Nelson leases vehicles from Gilbertville.

At the Gilbertville and Rockville-Ellington terminals, Gilbertville keeps lists of Nelson-owned vehicles described by type, registration, vehicle, and serial number and make to facilitate leasing. These lists and a pile of executed leases covering complete tractor-trailer units were observed by a Commission employee engaged in investigation. For convenience, printed form leases and vehicle inspection reports are used. On November 8, 1955, literally hundreds

of executed leases were available for inspections by another Commission employee.

The terminal manager at Gilbertville explained to the Commission employee that usually when either company handled a shipment destined for a point on the lines of the other, a vehicle was leased by the destination carrier from the other and the same driver was employed, thus enabling performance of an uninterrupted through movement.

On November 8, 1955, Gilbertville owed Nelson approximately \$19,000 in equipment rentals. For the period, January 1, to July 31, 1956, such rentals amounted to \$7,065.03. During an investigation at the Rockville-Ellington terminal, the Commission employees found that Gilbertville had on hand a complete file of doctor's certificate for all of Nelson's drivers, that in numerous instances the same driver was employed by both during the same payroll period, and that the drivers of both were using the same time-recording [fol. 57] clock. They also observed a posted seniority list of Nelson drivers upon which appeared the names of five or six Gilbertville drivers. Names of Nelson drivers were found in Gilbertville records. At that time, Kenneth admitted that the same driver might be employed by both companies during the same payroll period and even during the same day; that the duplication of drivers' medical certificates in the files of both companies was an industry practice and precautionary measure to insure compliance with the Commission's safety regulations.

At least 25 percent of the repairs on Gilbertville's vehicles are made by Nelson at Rockville-Ellington. Nelson pays its mechanics two dollars an hour, it charges Gilbertville three dollars an hour, and, for parts, cost plus 10 percent. The monthly cost of such repairs range from \$300 to \$400. Gilbertville maintains a mechanic at New York City. It also buys oil and motor fuel from Nelson at Newton.

It interchanges freight with many carriers; about 5 percent in terms of its total revenue, with Nelson, and another 4 to 5 percent with Byrnes. Points of interchange with Nelson are Manson, Gilbertville which is in the Town of Harwick, and Rockville-Ellington. Its division of interline revenues with Nelson is a constant 40 percent regardless of length of respective hauls. The evidence shows that divi-

shions between carriers are customarily computed on a mileage prorate basis and sometimes on a fixed percentage basis. At Rockville-Ellington, it was learned that Nelson did all of the billing on shipments interlined with Gilbertville, regardless of whether prepaid or collect and regardless of which carrier made delivery. On November 8, 1955, Nelson owed Gilbertville over \$39,000 for interline settlements. Since, as Kenneth testified, only about 5 percent of Gilbertville's operating revenues, which for the years 1953 through 1955 were \$616,544, the size of the indebtedness indicates an accumulation during the whole of the three years.

At various times and places, commission employees in the performance of their duties observed some seven or eight instances of the movement of the shipments of one carrier by the other. Thus, it may be reasonably inferred that they engaged in the practice of commingling or pooling their shipments to suit their convenience.

FINANCIAL DATA

Balance sheets of Nelson and Gilbertville show:

<i>Nelson</i>		
ASSETS	As of 7/31/56	As of 12/31/55
Cash	\$ 5,572	\$ 13,313
Notes receivable	3,792	3,820
Accounts receivable, less reserve for uncollectibles	70,815	86,475
Prepayments	27,095	18,594
Materials and supplies	9,549	8,942
Total current assets	116,763	127,324
Tangible property (operating) net	444,650	294,295
Intangible property	0	0
TOTAL ASSETS	\$561,413	\$421,619

LIABILITIES	As of 7/31/56	As of 12/31/55
Notes payable	\$ 13,563	\$ 20,000
Accounts payable	42,762	55,159
Wages payable	12,275	9,362
Accrued taxes	11,303	15,425
Total current liabilities	79,903	99,946
Advances payable (notes payable officers and not within 1 year)	46,527	16,298
Equipment obligations	269,955	152,806
Reserves (injuries, loss and damage, income taxes)	7,585	11,102
Total liabilities	403,970	280,152
Capital stock	49,400	49,400
Surplus (including net profit, less taxes)	108,043	92,067
TOTAL LIABILITIES AND CAPITAL	\$561,413	\$421,619

[fol. 59]

Gilbertville
(As adjusted at hearing)

ASSETS	As of 7/31/56	As of 12/31/55
Cash in banks	\$(4,508)	\$ 10,068
Accounts receivable, less reserve for uncollectibles	55,663	48,084
Prepayments	6,169	2,384
Materials and supplies	0	0
Total current assets	57,324	60,536
Tangible property (operating) net	112,376	75,116
Land	4,175	
Intangible property		
Organization	150	150
Franchises, less reserve for amortization	5,750	6,625
TOTAL ASSETS	\$179,775	\$142,427

LIABILITIES	As of 7-31-56	As of 12-31-55
Accounts payable	\$ 32,513	\$ 50,622
Wages payable	14,334	5,575
Taxes accrued	11,335	9,681
Equipment obligations due within 1 year	38,399	18,207
Total current liabilities	95,581	84,085
Notes payable officers	20,095	19,597
Equipment obligations	34,423	14,764
Reserves (injuries, loss and damage, income taxes)	5,088	5,510
Total liabilities	\$155,187	\$123,956
Capital stock	100	100
Surplus (including net profit, less taxes)	24,488	18,371
TOTAL LIABILITIES AND CAPITAL	\$179,775	\$142,427

Operating statements of the two carriers show the following revenues and net incomes:

Nelson

	Operating revenues	Net Income or Loss Before Income Taxes	After Income Taxes
1953	\$895,774	\$27,678	\$19,982
1954	889,420	8,206	2,637
1955	924,607	17,809	12,116
1956 to August 1	630,607	18,600	15,976

Gilbertville

1953	\$ 75,489	\$22,839	\$20,314
1954	117,818	(1,158)	(2,499)
1955	423,237	4,573	2,035
1956 to August 1)	444,777	9,588	6,117

[fol. 60] It is noted that for the year 1953, Gilbertville's operating revenues were \$75,489, its administrative and

general expense \$4,389, and net income \$20,314, whereas for the year 1954 its operating revenues climbed to \$117,818, its administrative and general expense to \$34,027, and its net income fell to a loss of \$2,499.

The "giving effect" balance sheet as of July 31, 1956, reflects the increase in Nelson's corporate shares from 500 to the 578 that would have been issued to Kenneth Nelson if consummation of the transaction had been effected on that date, calculated according to the formula contained in the contract of August 18, 1955. It also shows that as of that date, the combined current assets of the two companies were \$174,087 against combined current liabilities of \$175,484, after an adjustment at the hearing to include \$38,399 in equipment obligations due within one year.

Consummation of the transaction will require no new borrowing and it is anticipated that Nelson will have no difficulty in financing it in view of the projected combined net incomes and the increase expected therein through operating economies. Applicants indicated at the hearing that Nelson has no objection to the immediate writeoff of the amount assigned to its "Other Intangible Property" account as a result of the transaction, and, if approval is granted, it will be conditioned accordingly.

A "giving effect" operating statement for the first seven months of 1956 submitted by applicants shows anticipated savings approximating \$37,184 from various economies to result from unification of operations, thus increasing combined net operating revenues to \$77,566 for the unified [fol. 61] operation with an operating ratio of 92.8 percent as compared with an operating ratio of 96.2 percent calculated upon the bare sum of the revenues from separate operations. The estimates of many of the items of expected savings are challenged by the rail carriers because applicants' witnesses were unable to provide sound or credible bases therefor, and because it is argued many of the economies have already been effected by operations under common control.

If the transaction is consummated, some employees will be reassigned to reduce over-time wages; an additional employee will be assigned to safety work and another to claims

supervision. All employees of both companies are to be retained. However, there will eventually be a reduction in the office staff of three employees by attrition. An additional terminal may be established at Springfield, Mass., on land recently acquired by Gilbertville for terminal purposes, in part to eliminate considerable back-haul operation in the observance of gateways. The applicants do not believe that the merged operations will enjoy any substantial increase in freight tonnage beyond that handled by the two companies. The merger, they claim will benefit the public by producing one financially sound company able to provide a better service.

PROTESTANT AND OPPOSING MOTOR CARRIER PARTIES

The motor carriers protesting and opposing the application are common carriers, each operating under one or more certificates issued by the Commission. The evidence in behalf of ten of them, viz., Alvin B. Holmes, doing business as Holmes Transportation Service and/or Jones Express, Worcester, Mass., Newburgh Transfer, Inc., Newburgh, N. Y., Taylor's Express Co., Haverhill, Mass., P. B. Mutrie Motor Transportation, Inc., Waltham, Mass., H. T. Smith Express Co., Inc., Wallingford, Conn., National Transportation Company, Bridgeport, Conn., Lombard Bros., Inc., Waterbury, Conn., Downing & Perkins, Inc., Newington, Conn., Westchester Motor Lines, Inc., Tuckahoe, N. Y., and Jackson Transportation Corporation, New York, N. Y., was submitted by means of substantially similar stipulations and exhibits setting forth operating authorities, equipment operated, certain operating statistics, and locations of terminals. Each avers that it performs service throughout the territory covered by its operating authority. Each opposes the application because it believes that Gilbertville's operating authority is dormant, in part; that new competition would result from the proposed merger; and that granting the application would have an adverse effect upon it.

Holmes is authorized to transport general commodities with exceptions, over regular routes between specified

points in Massachusetts, on the one hand, and, on the other, specified points in New Hampshire, Vermont, Rhode Island, and Connecticut, and between certain points in such States other than Massachusetts; and general and specified commodities between points in Massachusetts, Rhode Island, Connecticut, and that part of New York and New Jersey within 20 miles of New York City. It maintains terminals at ten points in the States mentioned, except New York and Vermont; and operates 68 trucks, 51 tractors, and 101 trailers. Its operating revenues and ratios³ are as follows: For 1954, \$1,888,921, ratio 99.11; for 1955, \$2,054,860, ratio [fol. 63] 98.05; and for 24 weeks ending June 16, 1956, \$1,072,543, ratio 99.96.

Newburgh Transfer, Inc., controlled by Holmes under temporary authority, claims authority so far as here material, to transport general commodities, with exceptions, over regular routes between New York City and Philadelphia, Pa. It is not clear from an examination of its certificates that it has such authority. It operates 11 trucks, 15 tractors, and 26 trailers, and maintains terminals at Newburgh and Philadelphia, and uses the terminals of other carriers at Secaucus, N. J., and Colonie, N. Y. Its operating revenues and ratios are: For 1954, \$685,326, ratio 101.2; for 1955, \$255,924, ratio 122.2; first quarter of 1956, \$60,928, ratio 109.4.

Taylor's Express Co., also controlled by Holmes, is authorized to transport general commodities, with exceptions, over several regular routes between Boston and Haverhill, Mass., and between Haverhill and Lowell, Mass., serving certain intermediate and off-route points; and over irregular routes between Haverhill and Merrimac, Mass., on the one hand, and, on the other, points in Rockingham and Strafford counties, and a portion of Hillsboro County, N. H. It maintains a terminal at Haverhill, and, jointly with Holmes, at Lowell and Cambridge, Mass., and operates 15 trucks, 4 tractors, and 7 trailers. Its operating revenues and ratios are: For 1954, \$214,875, ratio 97.3; for 1955, \$202,069, ratio 96.3; for 24 weeks ending June 16, 1956, \$102,028, ratio 98.7.

³ Operating ratios are stated in percentages of carrier operating expenses to carrier operating revenues.

Mutrie opposes the application principally to the extent that it would authorize Nelson as the surviving carrier, to [fol. 64] transport machinery or liquid commodities in tank vehicles. Mutrie transports such commodities to the extent authorized by its certificates. Insofar as here pertinent, it is authorized to transport general commodities over regular and irregular routes between certain points in Massachusetts, including Boston, and certain points in Rhode Island, Connecticut, Maine, New Hampshire, and New York, including New York City, between New York City and points in New Jersey within 50 miles thereof, and many different liquid commodities generally between points in an area extending from and including the New England States southward through New York, Pennsylvania and New Jersey to and including a portion of Delaware. It maintains terminals at Waltham, Mass., Willingford, Conn., Manchester, N. H., Woodbridge and Jersey City, N. J., and Pawtucket, R. I.; operates 391 trucks, trailers, tank vehicles, low-bed, platform and pole trailers, etc., its investment in which is approximately \$2,827,040. It employs 246 persons. Its gross revenues and operating ratios are: For 1954, \$3,013,885, ratio 96.7; for 1955, \$3,463,547, ratio 96.9; and for 1956 to July 1, \$1,740,587, ratio 98.7.

Smith is authorized to transport, over regular routes, general commodities, with exceptions, between Meriden and Boston, Carteret, N. J., and four points in Connecticut, between Hartford, Conn., and Sturbridge, Mass., and between Waterbury and Bridgeport, Conn.; over irregular routes, between points in Connecticut, and between Meriden, on the one hand, and, on the other, nine points in Massachusetts, Passaic, Paterson and Newark, N. J., and points within ten miles of the latter, and Albany, N. Y., and points within ten miles thereof; over irregular routes, heavy machinery, between points in Connecticut, and between Meriden, on the one hand, and, on the other, points in New Hampshire, [fol. 65] Massachusetts, Rhode Island, New York, Pennsylvania and New Jersey. It has terminals at Wallingford, New York City and Boston, and operates 6 trucks, 41 tractors, and 75 trailers. Its operating revenues and ratios are: For 1954, \$1,194,899, ratio 98.4; for 1955, \$1,216,426, ratio 99.6; for first quarter of 1956, \$316,126, ratio 96.

National is authorized to transport general commodities, with exceptions, over regular routes between Perth Amboy, N. J. and Hartford serving all intermediate points and the following off-route points: Five in New York, 22 in Connecticut, 6 in Massachusetts, points in Bergen, Essex, Hudson, Union, portions of Passaic and Middlesex, counties, in New Jersey, and points in the New York commercial zone as defined by the Commission; between certain points and off-route points in Connecticut; between New Freedom, Pa., and junction of U. S. Highways 1 and 9, serving, among others, the intermediate points of Baltimore, Camden, and Philadelphia; and finally between certain other points in Connecticut, Massachusetts, and New York. It maintains terminals in Boston, Holyoke, Mass., Hartford, New London, Conn., Bridgeport, Kearney, N. J., Baltimore, Philadelphia, and Lancaster, Pa., and operates 40 trucks, 90 tractors and 150 trailers. Its operating revenues and ratios are: For 1954, \$2,730,157, ratio 100.4; for 1955 \$2,894,374, ratio 98.9; for the first quarter of 1956, \$804,374, ratio 99.0.

Lombard is authorized to transport general commodities, with exceptions, over regular routes generally between numerous specified points, serving numerous intermediate and [fol. 66] off-route points, in an area extending from Marcus Hook, Pa., northward to and including Massachusetts. The area includes parts of Pennsylvania, New Jersey, New York, Connecticut, Rhode Island and Massachusetts. It has terminals at Philadelphia, Elizabeth, N. J., Bridgeport, Waterbury, South Windsor, Conn., Worcester and Boston, and operates 38 trucks, 103 tractors and 128 trailers. Its operating revenues and ratios are: For 1954, \$2,561,004, ratio 100; for 1955 \$2,580,090, ratio 100.3; for the first quarter of 1956, \$779,771, ratio 100.9.

Downing is authorized to transport general commodities, with exceptions, over regular routes between Hartford, Conn., and Lancaster, Pa., serving all intermediate points, and certain off-route points in New Jersey and Pennsylvania, and over irregular routes between points in Connecticut, Massachusetts, a portion of Rhode Island, southeastern New York, and portions of New Jersey and eastern Pennsylvania. It has terminals at Newington (Hartford), Conn., Worcester and Philadelphia, and operates 20 trucks,

40 tractors, 60 trailers, and 8 flatbeds. Its operating revenues and ratios are: For 1954, \$1,047,155, ratio 98.9; for 1955, \$1,148,710, ratio 102.3; and for the first quarter of 1956, \$360,369, ratio 102.4.

Westchester is authorized to transport over regular routes new furniture and certain toys from certain points in Massachusetts to certain points in New York and New Jersey including service to such intermediate points as New York City, Jersey City, Albany, Hartford and Meriden and four off-route points in Massachusetts and New York; over irregular routes, special commodities, such as ladies and children's wearing apparel, new furniture, baby and [fol. 67] doll carriages, paint and paint products, and household goods, from, to and between points generally in portions of Pennsylvania, New Jersey, New York, Connecticut, Massachusetts, Vermont, and Rhode Island; and general commodities, with exceptions, between New York City and Westchester County, on the one hand, and, on the other, points in Fairfield County, Conn. It operates 20 tractors and 24 trailers.

Jackson is authorized to transport over irregular routes, new furniture between New York City and points in New York and Connecticut within 50 miles of Columbus Circle, in that city, and between New York City, on the one hand, and, on the other, Philadelphia and points in New Jersey. It operates 3 trucks, 10 tractors and 14 trailers.

M & M Transportation Company, of Boston, is interested here only in the territory extending from, and including, Rhode Island and Massachusetts on the north to and through New York City to points south thereof. It is not interested in local service between points in Massachusetts, Rhode Island and Connecticut. It is authorized to transport over eight regular routes general commodities, with exceptions, between Boston and Philadelphia serving specified intermediate and off-route points in Massachusetts including Springfield, Worcester and 20 mile area, and 35 mile Boston area, Connecticut, including Hartford and New Haven, Rhode Island, including Providence and points in Rhode Island and Massachusetts within 30 miles thereof, Hudson and Kingston, N. Y., Camden, N. J. and points in New Jersey and Pennsylvania within 30 miles of City Hall

in Philadelphia, New York City, points in three New Jersey [fol. 68] counties, portion of Long Island, Newark, N. J., and points within 25 miles thereof; over regular routes, fish and fish oils from Barnstable, Mass., to New York City; packinghouse products from Boston to Baltimore and between Plymouth and Barnstable, Mass., and New York City; and cranberries from Plymouth and Barnstable to New York City. It maintains terminals with a supply of over-the-road equipment at New York City, Newark, Philadelphia, Springfield, Providence, Worcester and Boston, and operates 190 tractors, 258 trailers and 73 pickup trucks, supplemented by an average of four leased units per work day. Its investment in transportation facilities, equipment and terminals was \$2,188,407 as of January 1, 1956. It employs 850 persons, including 12 solicitors. Its operating revenues and ratios are: For 1954, \$7,481,186, ratio 92.5; for 1955, \$7,233,531, ratio 95.8, for the first six months of 1955 and 1956, respectively, \$3,602,497, ratio 95.96, and \$4,330,149, ratio 91.74. M & M provides daily overnight service on both truckload and less-than-truckload shipments between all points. It can meet the public demand for its services and has experienced little complaint. Its assistant traffic manager expressed little more than an awareness of the existence of Nelson and Gilbertville, and testified that M & M is very much interested in the application to the extent that it "would be seriously affected by any new competition in a field already overburdened with competitive factors"; and that there may be 65 to 70 general-commodity-common-motor carriers operating between points in Massachusetts in which M & M is interested and the New York area.

[fol. 69] Insofar as pertinent here, Adley Express Company, New Haven, Conn., is, generally speaking, authorized to transport general commodities, with exceptions over some 30 regular routes between Boston and Philadelphia through Connecticut, Rhode Island, New York and New Jersey, serving all intermediate points and as off-route points all points in Massachusetts, Rhode Island and Connecticut, in twelve counties in northern New Jersey, within 15 miles of City Hall, Philadelphia and in the New York commercial zone. It has thirteen terminals and 25 call sta-

tions within the area here involved, and operates 205 trucks, 229 tractors and 418 trailers, some of which are stationed at each terminal. Its investment in terminals, equipment and facilities as of January 1, 1956, was \$6,644,894. It employs 1,300 persons, including 40 solicitors. Adley's operating revenues and ratios are: For 1954, \$9,479,787, ratio 89.4; for 1955, \$10,355,065, ratio 94.3; for the first six months of 1956, \$5,935,578, ratio 89.68. It provides overnight service on both truckload and less-than-truckload traffic between all points pertinent here. During 1955 it handled 195,646,443 pounds, and during the first 6 months of 1956, 65,904,639 pounds, of freight between points in Massachusetts, on the one hand, and, on the other, points in New Jersey, and Philadelphia and points in Pennsylvania within 25 miles thereof. In this proceeding, it is interested in the intra-New England traffic and that in the area extending southward therefrom to the New Jersey area and Philadelphia. It has experienced some competition from Gilbertville and Byrnes, but not to any extent. There are some 50 or 60 competitive general commodity [fol. 70] motor carriers between Massachusetts and Philadelphia. In the Massachusetts-Rhode Island-Connecticut area, there are at least 100 such competitors, about 20 to 25 of whom are substantial. Adley recently acquired the Savage Truck Line operating rights, thus extending its authority south from Philadelphia to Virginia and North Carolina.

Hemingway Brothers Interstate Trucking Company, New Bedford, Mass., is authorized, insofar as pertinent, to transport general commodities, with exceptions, over regular and, in part, irregular routes in the general area from Philadelphia northward served by Adley. Their operations are substantially parallel, except that Hemingway serves New York City and Adley does not. Hence, their interests in the application are substantially the same. It was stipulated that Hemingway's witness would, if called to testify, give substantially the same answers to questions as those given by Adley's witness. Hemingway maintains 15 terminals with road equipment and 62 call stations, in all, the vast majority of which are in the area affected. It operates 98 trucks, 242 tractors and 384 trailers and em-

employs 903 persons. Its investment in terminals, equipment and other facilities as of January 1, 1956, was \$2,626,270 against which the outstanding obligations were \$837,766. Its operating revenues and ratios are: For 1954, \$7,577,087, ratio 96.53; for 1955, \$7,476,846, ratio 97.7; and for the first six months of 1955 and 1956, respectively, \$3,814,008, ratio 99.43, and \$1,242,471, ratio 97.84. It has lost some traffic to Gilbertville destined from two points in New Jersey to points in Massachusetts, most of which it has regained. It attracts business from Gilbertville and other [fol. 71] carriers and they from it. Hemingway has acquired extensive operating authority by several purchases.

MC-F-6178

In MC-F-6178, the Bureau of Inquiry and Compliance asserts that the over-all picture presented by the evidence amply demonstrates that Nelson and Gilbertville and the other respondents have violated the prohibitions in section 5 against control or management in a common interest of two or more carriers and that the application for approval of the merger is merely a tardy attempt to secure approval of an already unlawfully accomplished condition and that while individually the various incidents and circumstances shown by the record may not be conclusive, collectively, they clearly spell out a continuous existence, since the acquisition by Kenneth Nelson of the Gilbertville shares, of management and operation of the two carriers in a common interest. The Bureau, therefore, recommends a finding that the circumstances revealed by the record require the entry of an order calling upon the respondents to discontinue violation of the provisions of section 5(4) of the act. Although the motor carrier protestants and the motor carrier and railroad parties in interest proclaim their support of the investigation and argue that respondents are in violation of said section, none introduced evidence thereof and none has requested the entry of any corrective order.

Applicants-respondents argue that the leasing of trucks by one carrier to another, the presence of a list of equipment of the lessor carrier in the files of the lessee carrier

[fol. 72] to facilitate leasing, the sharing of telephones, and the friendly business relations between carriers engendered by close family relationship, do not constitute control in a common interest; that the few instances of record of the carriage by one carrier respondent of shipments of the other should be ascribed to human error and not given serious consideration; that Kenneth Nelson's continued employment by Nelson as a tariff consultant in 1953 concurrently with his management and operation of Gilbertville did not result in common control or management of the two carriers.

The pertinent part of section 5(4) provides that--

"(4) It shall be unlawful for any person," without the approval and authorization of the Commission, "to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, * * * in any manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated * * * in violation of" the foregoing provisions. "As used in this paragraph and paragraph (5), the words 'control or management' shall be construed to include the power to exercise control or management."

Paragraph (5) of section 5 declares that any transaction shall be deemed to accomplish or effectuate the control or management in a common interest of two or more carriers if such transaction--

- (a) is by a carrier and its effect is to place such carrier together with persons affiliated with it in control of another carrier;
- (b) is by a person affiliated with a carrier and the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier;
- (c) is by two or more persons acting together, one or more of whom is a carrier or affiliated with a carrier;

[fol. 73] and its effect is to place such persons and carriers and persons affiliated with such carrier or carriers in control of another carrier.

Paragraph (6) of section 5 provides that "a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier * * * it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person, will be managed in the interest of such other carrier." Section 1(3)(b) of the act declares in pertinent part that for the purposes of section 5, the word "control" * * * shall be construed to include actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation * * * or through or by any other direct or indirect means and to include the power to exercise control."

In *Colletti—Control—Comet Freight Lines* (1942), 38 M.C.C. 95, the Commission found that a transaction whereby a person in control of a carrier through ownership of 60 percent of its voting stock would become manager of the business of another carrier was subject to the provisions of section 5. In that case the scope of the word control was discussed:

"Section 5 is remedial in character and should be liberally construed. It is clear that the section was intended to cover acquisitions of control by any means and irrespective of whether or not the person holding control might legally enforce such control. 'Control' is generally defined to be the power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Control is frequently said to be synonymous with manage. There is nothing in the act to indicate that the term is used in other than its ordinary sense. It is obvious that there may, and do, exist different types of control. For instance, there [fol. 74] may be absolute control which would imply complete dominion over the subject matter; or there may be joint control as where two persons have equal power thereover; there may be direct or indirect con-

trol; or there may be actual as distinguished from legal control. The words 'control or management' as used in section 5 embrace all forms and types of control or management. . . . The existence of legal control in one person does not prevent concurrent existence of actual control in another through acquiescence of, or a management contract with, the former. The fact that Colletti, theoretically at least, would be subject to the orders of Comet's board of directors does not negative possession by him of actual control within the meaning of the statute." 38 M.C.C. 97.

The history of the broad language contained in section 1(3)(b) and in paragraphs (4), (5) and (6) of section 5 makes it clear that the existence of control must be determined by a regard for the "actualities" of intercorporate and intercarrier relationships and that by investing the Commission with the duty of ascertaining control, Congress did not imply artificial tests of control. One of the kinds of transaction specified in section 5(5) which shall be deemed to accomplish or effectuate the control or management of two carriers in a common interest is a transaction by a carrier, resulting in such carrier and persons affiliated with it, taken together, acquiring control of another carrier. The definition of affiliation in section 5(6) assumes that the person with respect to whom the question of affiliation arises will acquire control of the carrier in question; but, continues with the statement that affiliation of such person with another carrier shall be found if it is reasonable to believe that the carrier, control of which has been or will be effected by such person, will nevertheless be managed in the interest of such other carrier. The definition recognizes that control of the carrier by the person in question does not negative the coexistence of his affiliation with the other carrier. Both may be present [fol. 75] and it does not imply affirmative domination of the person by the carrier with which he is affiliated. The term "managed" obviously means "managed in any material degree." *Greyhound Corp.—Investigation of Control—Southern Limited* (1946), 45 M.C.C. 59, 77-79.

Paragraphs (4), (5) and (6) were planned by Congress in the light of what had theretofore been done through

myriad devices without Commission supervision. They are necessary because of the difficulty in establishing as a matter of law in many cases where as a matter of fact it is known, that control or management in a common interest of two or more carriers is effectuated or actually exists. Id., p. 77.

Webster's New Collegiate Dictionary defines the verb "manage" as "To control and direct; to conduct, guide, administer" and "To direct affairs; to carry on business or affairs"; and the noun "management" as "conduct; control; direction."

The case in hand appears to be on the borderline. Nevertheless, taking into view all of its many facets in the broad and penetrating light of the statute and its past application, a reasonable conclusion is impelled that control and management of both Nelson and Gilbertville in a common interest were effectuated at some time which cannot be determined on this record and are presumably continuing. Family ties, of themselves are not evidence of action to a common purpose. However, the natural and commendable impulse of a member of a family to cooperate with other members in business affairs as in other fields may push the cooperation beyond the permissible bounds of remedial legislation. The family tie provides an urge in addition to the profit motive. Family cooperation, therefore suggests some scrutiny of the interrelationship of family enterprises in the administration of such legislation as section [fol. 76] 5 of the act. There is no doubt that the individual respondent, members of the same family, were affiliated with Nelson or Gilbertville.

Mrs. Linnea Nelson and two of her sons, Oscar and Charles, set up the business of Nelson in 1930. Upon incorporation of the business in February 1948, 496 of the 500 shares authorized were issued to her and one of each four sons, Oscar and Charles Chilberg and Clifford and Kenneth Nelson. About three months later, she distributed 196 of her shares equally among the sons so that each then had 50 shares. After her death bequests of 42 shares each were distributed from her estate to each of her seven children, and the corporation bought the six remaining shares. On June 30, 1951, and early in 1953, Oscar sold

his 50 and 42 shares, respectively to Charles. On September 22, 1951, and in early 1953, Kenneth sold his 50 and 42 shares, respectively, to Clifford. Both Oscar and Kenneth resigned as officers and directors upon the sale of their shares in 1951. Charles and Clifford, having acquired shares from the other devisees, have been and now are the owners of 45.75 percent of the shares outstanding, or 226 each. The other 42 shares are held by a sister, Greta Nelson Carlson.

[fol. 77] The sale by Kenneth of his shares and his resignation from office in September 1951, did not mark severance of his connection or affiliation with the company. Apparently, he continued to occupy office space at Nelson's headquarters in Rockville-Ellington. As a "free lance" tariff consultant he was employed and paid by Nelson over \$15,000 in 1952 and over \$13,000 in 1953; payments being made upon bills presented periodically by Kenneth. The nature and extent of the services, if any, rendered to Nelson does not appear of record. Nelson was Kenneth's only client.

In January 1953, while still consultant for Nelson, he became interested in, and advised with one, Solomon, his accountant and financial adviser, concerning the purchase of all of the capital stock of Gilbertville. Solomon was also accountant and financial adviser for Nelson and the Nelson-Chilberg family and for Gilbertville and Byrnes after they were acquired. On March 1, 1953, Kenneth took control of, and began to operate, Gilbertville. In July 1953, with the help of Oscar's name as co-maker on promissory notes, he financed and completed the purchase. Kenneth became the president and Oscar, to whom 48 shares had been transferred, presumably at Kenneth's direction, became treasurer. A qualifying share was issued to Kenneth's attorney. On April 1, 1954, Oscar who had paid nothing for the 48 shares, transferred them to Kenneth who, in turn and without receiving any consideration, transferred 24 to his wife Phyllis and 24 to Gilbertville's terminal manager at Gilbertville to enhance his "prestige". Kenneth, nevertheless, acknowledged that he beneficially owns and [fol. 78] controls such shares. At the same time, Oscar re-

signed as treasurer and director, and shortly thereafter the terminal manager was elected a director and Kenneth as treasurer (in addition to the presidency). Oscar thereafter devoted himself to the operation of his garage at Philadelphia, which, incidentally, is patronized by Nelson.

Since Gilbertville's "administrative and general" expense for 1953 amounted to only \$4,389.37, and since its net after taxes in that year was \$20,314.36, a reasonable inference may be drawn that Kenneth received little or nothing as salary in that year, and, consequently, that his "earnings" of over \$13,000 as tariff consultant to Nelson were in the nature of a subsidy to Gilbertville. To offset such an inference we have the statement of the accountant that a portion of the \$20,059 shown on its 1955 balance sheet as "Notes payable officers" represents in part unpaid salary owing to him. Even so, the Nelson payment to him in 1953 was at least the equivalent of a loan, without interest, to Gilbertville since it received Kenneth's services without any outlay therefor in that year.

When Kenneth took control of Gilbertville on March 1, 1953, after advising with his accountant and financial adviser, it had a deficit of \$39,868. As of December 31, 1953, its assets amounted to \$69,383 and liabilities to \$50,447 (after net income of \$20,314 after taxes), with a net worth of \$18,935. The accountant-financial adviser testified that because of Gilbertville's "precarious" financial condition, poor credit standing and insufficiency of working capital, he volunteered advice in January 1954, to Kenneth to seek [fol. 79] a merger with Nelson. Thereafter, he repeated his advice, and spoke to Charles Chilberg, president of Nelson of the possibility of such a merger. He suggested merger with none other than Nelson because he knew it was susceptible to a "merger deal" since Charles and Clifford were interested in the expansion of routes to the south. Notwithstanding Gilbertville's "precarious" condition, activity with respect to the suggested merger was suspended while arrangements for two acquisitions were made. By April 28, 1954, arrangements had been made for the purchase by Gilbertville of the operating rights of Louis Marmer, doing business as Wolff's Express, for \$7,500 in

cash. Pursuant to approval of the transaction by the Commission on June 16, 1954, it was consummated and the purchase price was entered in Gilbertville's books as an intangible asset to be amortized. In April or May of 1954, Charles Chilberg and Clifford Nelson negotiated the purchase by them of the capital stock of Byrnes, which after approval by the Commission in MC-F-5749, was finally consummated August 21, 1956, with the understanding that after certain tax advantages have been exhausted Byrnes will be merged with Nelson. Meanwhile, Charles and Clifford had been operating Byrnes under temporary authority. Byrnes' general commodity authority complements that held by Gilbertville after its acquisition of Mariner's operating rights. By interchange, Byrnes and Gilbertville can provide a through general commodity service between points in Massachusetts, Rhode Island and Connecticut, on the one hand, and, on the other, points as far south as the District of Columbia.

[fol. 80] The accountant adviser testified that when he spoke to Charles Chilberg about the merger in April 1954, he drew attention to the operating economies that could be expected through the elimination of duplications. However, since Gilbertville was running a deficit in earned surplus and Nelson was apparently financially sound, it is not a violent assumption that Kenneth, Charles and Clifford as early as the forepart of 1954 saw in the merger financial advantages to Gilbertville's owner to whom it was much indebted and the fulfillment of Nelson's ambitions to expand to the south with the aid of the Byrnes' operating rights, if, indeed, Nelson's or the Nelson-Chilberg ambitions to expand had not originally motivated the purchase of Gilbertville by Kenneth. Gilbertville's financial condition at that time was certainly not such as to make it attractive as an investment. As of December 31, 1953, it owed Kenneth \$11,792 which had increased to \$15,024 by December 31, 1954, and to \$20,095 by July 31, 1956. Moreover the promissory note of \$30,000 to the Bank signed by Kenneth and Oscar is still unpaid. Another advantage is that the merger will enable Nelson to transport its narrow range of commodities throughout Gilbertville's general commodity authority areas.

Activities to effect the merger were resumed in January 1955, at a conference between Kenneth, Charles, Clifford, their attorney and the accountant-adviser. On August 18, 1955, the merger agreement was signed and in October 1955, the instant application was filed.

In dealing with the fitness of Nelson to succeed to and exercise Gilbertville's operating rights, some of the opposing motor carriers argue that in order to "condition" [fol. 81] the operations of the latter to be acceptable, Nelson sacrificed some of its traffic to Gilbertville and that this circumstance is evidence of management and control in a common interest. They point to the rapid expansion in Gilbertville's operating revenues from \$75,489 in 1953 to \$423,237 in 1955 and to \$444,777 in the first seven months of 1956 as compared with the slower increase of Nelson revenues from \$895,774 in 1953 to \$924,607 in 1955 and to \$630,607 in the first seven months of 1956. Some of the opposing carriers also assert that of the 1,369 shipments shown on exhibit 26 as moved by Gilbertville, approximately 461 or 33 percent consisted of basic textile commodities such *inter alia* as nylon cotton, cotton piece goods, etc. However, an examination of the exhibit in the light of Nelson's narrow commodity operating authority (materials used in the manufacture of cloth, waste materials resulting therefrom and supplies and materials used in the transportation or processing of such commodities when moving to or from places of processing) and its limited areas of origin and destination discloses that no more than 15 percent of the shipments could reasonably or lawfully have been transported by Nelson. It is doubtful that Nelson sacrificed much, if anything, in the way of business to build up Gilbertville. However, it may reasonably be inferred from the phenomenal growth in its revenues that Charles Chilberg and Clifford Nelson and other members of the Chilberg-Nelson family extended a helping hand to Gilbertville in the development of its custom.

An appraisal of the matters related above beginning with the employment of Kenneth by Nelson as a "tariff [fol. 82] consultant" after severance of his connections as an officer and shareholder is persuasive that an overall plan or project to create a larger and more significant

motor carrier in the New England-Middle Atlantic area using Nelson as a nucleus was conceived and followed. Whether it was conceived before or at the time Kenneth negotiated for purchase of Gilbertville or at some later time is not revealed. Certainly, it commenced to take shape in April or May of 1954 when the Byrnes and Marmer acquisitions first received attention. At any rate, events and the interrelations of the respondent carriers following the purchase of Gilbertville mark their operation as that of a unified organization.

Nelson provides a pool of equipment to which Gilbertville constantly, frequently and readily resorts by means of handy lease forms. Both draw upon the same group of drivers, whose names and other information concerning them were for convenience kept in the files of both. Both occupy the same headquarters and, with few exceptions, use the same telephones. Of a total of six terminals between them, both occupy the same terminals at four points. Three are under lease from Bergson. At two of the four, Gilbertville pays its share of the rentals, at the other two it pays the entire rental. For economy or convenience they carry one another's shipments. It is clear that each operates under some managerial direction from officers or employees of the other. The divisions of revenues on traffic interchanged between them is upon a fixed percentage basis. Nelson does all of the billing on such traffic. By arrangement, interchange of traffic between them is effected by an "interchange" of equipment under lease, whereby the [fol. 83] same vehicle and driver accomplish the through movement under leases prepared in advance of such interchange. To some extent Nelson repairs and services motor equipment owned and operated by Gilbertville. Their accounting services and financial advice come from the same source. They are extremely liberal one with the other with respect to debit balances. As of November 8, 1955, Nelson owed Gilbertville approximately \$39,000 for interline settlements and Gilbertville owed Nelson some \$19,000 in equipment rentals. It may be reasonably inferred that, upon consummation of the merger, if approved, Kenneth Nelson will again join Nelson as a responsible officer or employee. Charles Chilberg under questioning neither af-

firmed nor denied that probability, and it is noted that the elimination of Kenneth's salary as president of Gilbertville was not listed among the economies to be effected by the merger.

Although no one of the foregoing acts, practices and arrangements affords a clear indication of control or management in a common interest, they, together with the acquisitions referred to above and the circumstances surrounding them, require a finding that control and management in a substantial degree of Nelson and Gilbertville in the common interest of Nelson and its shareholders and of Gilbertville and its shareholders have been accomplished or effectuated and presumably are being maintained. *Greyhound Corp.—Investigation of Control—Southern, Ltd.* (1946), 45 M.C.C. 59, 79; *Ratner—Investigation of Control—Nowak Trucking Co.* (1948), 55 M.C.C. 104, 109-110.

MC-F-6099

Protestants, including the rail carriers, and the other opposing motor carriers urge denial of the application for [fol. 84] the reason that the proposed merger would not be consistent with the public interest because (1) Nelson is not fit to perform the service under the merged operating rights, and (2) the transaction would result in the creation of a new or different service without showing a need therefor to compete with the established services of protestants and other opposing carriers. The Bureau of Inquiry and Compliance urges denial only upon the ground of want of fitness. Nelson's unfitness is demonstrated, it is said, by the participation of itself and those who control it in accomplishing or effectuating control or management in a common interest in violation of section 5(4) and by Nelson's violations of the act in other respects and of the Commission's safety and other regulations. Mutrie, Holmes, Newburgh and Taylor urge denial, but request that if approval is granted it be conditioned upon the cancellation of all regular route, and certain irregular route, authority contained in Gilbertville's certificate as dormant. Applicants-respondents maintain that past violations, if

any, do not constitute a bar to the approval of a transaction such as here proposed.

The violations, other than of section 3, as shown by the record, consisted of one instance of destruction of records, about four instances of failure to submit drivers' logs for inspection by Commission investigators, two of failures by drivers to keep their logs properly, and two of driver failure to keep logs, one of failure to require a doctor's certificate of a driver, approximately six of failure to have certain safety equipment on trucks or to keep trucks in safe [fol. 85] operating condition, several of operations beyond operating authority by both carriers through failure to observe proper gateways, through carriage of unauthorized commodities or by operation beyond the authorized routes or territory of the carriers. Such violations were discovered during the course of investigations on about ten scattered days between October 22, 1954, and June 1, 1956, by Commission employees. Appellants-respondents offer in mitigation the statement that when such violations were drawn to Kenneth Nelson's attention, corrective action was taken. However, many of the described violations were committed by or are ascribable to Nelson.

It is true that the Commission has on many occasions found that past violations of the act and the regulations by an applicant are not a bar to the granting of his application for a certificate or of approval of an application under section 5. In *Lieberman Extension of Operations—Michigan* (1948), 48 M.C.C. 399, 402-404, the violations of record were many and varied, but upon consideration of all of the evidence the Commission found applicant fit. In *Riss & Co., Inc., Extension—Explosives* (1955), 64 M.C.C. 299, certain applicants were found fit, notwithstanding previous violations, the Commission stating at page 350 that:

"There is no inflexible rule by which an applicant's fitness can be determined. Consideration should be given to the nature and extent of past violations of our safety rules and regulations, and of States and city laws and regulations, the effect of such violations upon uniform regulation, the mitigating circumstances

shown to exist or to have existed, whether the carrier's past conduct represents a flagrant and persistent disregard of the provisions of the act and our rules and regulations thereunder, and the extent to which the carrier is attempting to take corrective measures to bring its operations in compliance with the law and regulations."

[fol. 86] In *Baggett—Control—Walker Hauling Co., Inc.* (1955), 65 M.C.C. 522, approval of a transaction under section 5 was granted although control had previously been accomplished in violation of that section. Therein, it was written:

"It is apparent that the parties have, for all practical purposes, consummated the major portion of the transaction, with a purchase price of \$1,000,000, reserving for our consideration and approval only the remaining portion involving the purchase of 5 shares of stock for \$675, which, obviously, is of little consequence so far as the terms and conditions of the whole transaction and the acquisition of control of the carrier are concerned. * * * The evidence otherwise shows the transaction to be in the public interest, and denial is not warranted solely because of the law violation; but our approval is not to be understood as a condonation * * *."

In the case at bar, there is no evidence of extensive or flagrant violations of either the act or the regulations. The violations shown and the circumstances in which they occurred do not establish a persistent disregard for regulation. Rather, they appear to be the result in some cases of ignorance of the requirements, and in others of a degree of carelessness and not wilfulness. The principals are youthful and are of such caliber that their experiences at the hearing herein can be expected to make them more conscious of and responsive to regulation. They earnestly deny that what has been done in respect of Gilbertville and Nelson amounts to effectuation of control in a common interest and on this record their view on that point cannot be

— said to be wholly groundless. Such control is not the result of any one act or transaction, but is the result of an evolution and a cumulation of acts, transactions and practices, the ultimate consequence of which may not be readily obvious [fol. 87] to the layman. A finding of unfitness by reason of violations is not warranted.

Adley, M & M, and Hemingway maintain on brief that approval would result in the creation of a new general commodity operation extending between all points in Massachusetts, Connecticut and Rhode Island through appropriate gateways, on the one hand, and, on the other, points in New Jersey, Philadelphia and surrounding area, defined areas in Maryland and Delaware and in and around the District of Columbia. It is pointed out that Nelson operations are confined by its certificate to a very limited class of commodities in the textile field within the foregoing area, and that the new operation to emerge from the unification of the operating rights of Byrnes and Lewis Marmer, both lately acquired by the applicants, would bear little, if any, resemblance to the very limited operations conducted under the various right previously in separate ownership. Adley et al., by an analysis of an exhibit placed in the record by Gilbertville upon which are listed approximately 1,400 shipments handled by it between May 1 and May 11, 1956, attempt to show how the pattern of its operations has already changed since its acquisition by Kenneth Nelson on March 1953 from intrastate in Massachusetts and intra-New England to the New England-New York City area. M & M, Adley and Hemingway assert that collectively they provide service between all major areas involved in the application and that they have experienced no serious competition from Gilbertville. Nothing is said concerning any competition experienced from Gilbertville—[fol. 88] Byrnes' operations between the New England area and the New Jersey, Pennsylvania, Maryland, District of Columbia areas.

Mutrie, Holmes, Newburgh and Taylor, in their brief, also contend that Gilbertville's pattern of operations has changed and that approval would engender a new service unlike the previous services without any proof of public

need therefor. Holmes holds cross-haul authority to transport general commodities between all points in Massachusetts, Rhode Island, Connecticut and New York City and points within 20 miles thereof. Thus, operations instituted under Gilbertville's certificate are claimed to be competitive with and detrimental to Holmes' operations and are new competition inspired by Gilbertville while in violation of section 5 of the act. Also, it is said, approval would authorize a new operation and new competition by Nelson between Massachusetts and Rhode Island points and Philadelphia in direct competition with the Holmes-Newburgh through service. As already mentioned, it is not clear that Newburgh's certificate authorizes operation by it between New York City and Philadelphia.

None of the other six opposing motor carriers filed briefs but announced at the hearing their opposition upon the general grounds that each operates to the extent of its operating authority, each believes Gilbertville's operating authority to be dormant in part and that the new competition to result from the merger would have an adverse effect upon it.

The eastern territory railroads say that the merger would enlarge Nelson's operating authority to some extent territorially and give it a vastly expanded commodity authority without proof of public need; that existing motor carriers are providing adequate service and that the application should be denied for these reasons, in addition to that for lack of fitness.

The evidence indicates that there are some 50 or 60 general commodity motor carriers competing for traffic between Massachusetts and Philadelphia, and at least 100 such carriers, 20 to 25 of whom are substantial, competing in the Massachusetts-Rhode Island-Connecticut area.

The difficulty with the basic opposition is that the competition which is feared is either already an accomplished fact or capable of becoming so even though the present application is denied. Gilbertville could still continue its operations under its general commodity authority intra-New England and between that area and the New York City-New Jersey areas. It could still inaugurate, if it has not done so already, or continue interchange with Byrnes in

the New York City area, providing through service between the New England points and those south of New York City. Denial of the application would not frustrate such competition.

Moreover, the competition is handicapped and would continue to be notwithstanding approval of the application by the requirements for observance of Gilbertville's principal present gateway restrictions. To provide service under general commodity authority between Massachusetts points, on the one hand, and, on the other, New York City and points in New York and New Jersey within 20 miles thereof, all operations must be conducted through the Town of Hardwick. Between any point in Massachusetts and any [fol. 90] point in Rhode Island or Connecticut operations must pass through Palmer or within 10 miles thereof. Service may not be provided between any point in Rhode Island or Connecticut, on the one hand, and, on the other, New York City or any point in New York or New Jersey within 20 miles thereof without operations through that part, if any, of the Town of Hardwick situated within 10 miles of Palmer. *Actna Freight Lines, Inc., Interpretation of Certificate* (1948), 48 M.C.C. 610; *La Mere and Conroy—Purchase—Ziffirin* (1949), 55 M.C.C. 501, 511. Through service, under Gilbertville's general commodity authority, except insofar as it may now lawfully be provided by interchange with Nelson, may not be provided between Rhode Island and Connecticut. *G. & M. Motor Transfer Co., Inc., Common Carrier Application*, (1944), 43 M.C.C. 497, 500.

The evidence shows a tremendous increase in Gilbertville's business from 1953 when operating revenues were \$75,489 as compared with the first seven months of 1956 when they were \$444,777. Notwithstanding, none of the opposing carriers offered evidence of any loss of traffic by them to Gilbertville from 1953 to August 1956. Mutrie and Holmes as well as Adley, M & M and Hemingway are of the opinion that this increase in traffic is illegal because it was developed under a unified control and at the expense of Nelson and, hence, should be given no consideration as evidence of consistency with the public interest. As seen, the evidence does not bear out a sacrifice on Nelson's part, perhaps because there are not very many origin-destina-

tion combinations common to the operating authorities of the two carriers with respect to Nelson's narrow range of [fol. 91] commodities. To what extent, if any, Gilbertville's increase in traffic is ascribable to the unified management, it is impossible to determine from this record. Moreover, if it be assumed that the increase is directly traceable to such management, neither the increase nor the operations conducted in handling the traffic involved can be said to be illegal.

Insofar as the record here reveals any facts upon the subject, it shows that neither the motor carrier nor railroad opponents will be adversely affected to any appreciable extent by the merged operations. Cf. *Kaplan Trucking Co. —Purchase—Hessler Cartage Co.* (1956), 70 M.C.C. 1, 3. At any rate, all are well established in the areas involved and should be able to meet in the future as they have in the past the additional competition from Nelson under the unified rights.

Although applicants' witnesses indicated that if the operations of the two carriers had been unified during the first seven months of 1956, savings estimated at over \$37,000 would have been realized from various economies, since the witnesses were unable under cross-examination to substantiate the amounts to be saved as to some of the items, it is doubtful that the savings would reach that total. However, the evidence shows that a substantial amount would be saved. This, together with the projected improvements in transportation services from the elimination of gateway observance on certain traffic presently interchanged, in loss and damage claim services, and in safety of operations and the establishment of a new terminal at Springfield are in the public interest and consistent therewith.

[fol. 92] Mutrie and Holmes, Adley, M & M, and Hemingway point out that the evidence fails to show any operations whatever over Gilbertville's general commodity regular routes between Boston and Lowell or to and from the intermediate and off-route points appurtenant thereto or over its irregular routes between points in Massachusetts; that the operating authority therefor is dormant and should be canceled since resumption of operations thereunder by Nelson would confront them with new competition contrary

to the public interest. Holmes and Taylor's, claiming general commodity rights in the latter to operate between New York City and Philadelphia, include Gilbertville's authority to haul sanitary napkins, facial tissues and paper boxes over regular routes from New York to Philadelphia with the above-mentioned authority to be canceled. The same criticism is made and the same disposition is requested with respect to the following irregular route authority contained in Gilbertville's certificate:

Pickled skins, from New York, N. Y., to Ipswich and Peabody, Mass.;

Pulpboard, from Boston, Mass., to Hardwick, Mass.;

Fertilizer and fertilizer materials, from Portland, Conn., to Hardwick, Mass., and points in Massachusetts within 15 miles of Hardwick;

Lime and Limestone products, from Adams and Lee, Mass., to Hamden, Hartford, and East Hartford, Conn., Providence and Woonsocket, R. I., New York, N. Y., and points in New Jersey within ten miles of New York, N. Y.;

Agricultural commodities, from Hardwick, Mass., to Melrose, Conn., and New York, N. Y.

Applicants attached an exhibit to their application containing a list of some 3,500 shipments moved by Gilbertville in the months of March and May 1955, and also submitted in [fol. 93] evidence an exhibit listing approximately 1,400 shipments moved by it in the period May 1-11, 1956, which lists, Kenneth Nelson testified, were fairly representative of all of Gilbertville's operations. An examination of the exhibits shows no shipments transported in regular route service under any of its regular route authority, and none of any of the specified commodities between any of the points named or described in the above-quoted portion of its certificate. It must, therefore, be concluded that the operating rights just referred to are dormant and should be canceled if the proposed transaction is consummated. Approval thereof will be conditioned accordingly. The two exhibits reveal service by Gilbertville within the State of

Massachusetts between interchange points therein on the one hand, and, on the other, an unascertainable number, less than 40, of origin or destination points therein. It cannot, therefore, be concluded that the authority to operate between points in Massachusetts is dormant.

Employees would not be adversely affected by the transaction. The increase in Nelson's fixed charges would not be contrary to the public interest. The findings herein will be conditioned to require that Nelson shall write off immediately following the consummation the amount which would be assigned to its "Other Intangible Property" account as a result of the acquisition and merger. Following the usual practice in such cases, the amounts to be recorded on its books as a result of the transaction will not be approved at this time, but will be reserved for consideration upon receipt of the statement to be filed as required by the order herein showing all expenditures and the accounting proposed to record the transaction.

In No. MC-F-6099, the Commission should find that the acquisition by the L. Nelson & Sons Transportation Co., of [fol. 94] control of Gilbertville Trucking Co., Inc., through acquisition of its capital stock by exchange, the concurrent merger into the former of the operating rights and property of the latter for ownership, management, and operation, and the acquisition by Charles G. Chilberg and Clifford J. A. Nelson of control of the operating rights and property through the control and merger, upon the terms and conditions set forth, which terms and conditions are found to be just and reasonable, constitute a transaction within the scope of section 5(2)(a) and will be consistent with the public interest and that, if the authority herein granted is exercised, The L. Nelson & Sons Transportation Co. will be entitled to operate under that portion of the operating rights in No. MC-87431 described in appendix A hereto, to be embraced in a certificate in its name, with duplications, if any, eliminated; provided, however, (1) that the portion of the operating rights in No. MC-87431 not described in appendix A shall be canceled concurrently with the exercise of the authority herein granted, and (2) that The L. Nelson & Sons Transportation Co. shall immediately write off the amount assigned to its "Other Intangi-

ble Property" account as a result of the transaction, such writeoff to be accomplished in the manner to be determined upon the submission of a statement showing all expenditures and accounting proposed to record the transaction, as required by our order herein.

In No. MC-F-6178, the Commission should find that The L. Nelson & Sons Transportation Co., Gilbertville Trucking Co., Inc., Charles G. Chilberg, Clifford J. O. Nelson, [fol. 95] Greta C. Carlson and Kenneth A. H. Nelson effectuated or participated in effectuating the control and management of the L. Nelson & Sons Transportation Co. and Gilbertville Trucking Co., Inc., in the common interests of such carriers and of the individuals named above, and that all of them participated in the continuance of such control and management, in violation of section 5(4) of the act. In view of the conclusions in No. MC-F-6099, however, the investigation proceeding will be terminated by the order herein subject, however, to reopening for further proceedings in the event that the transaction in No. MC-F-6099 is not consummated and such control and management appears not to have been discontinued.

An appropriate order should be entered.

[fol. 96] **APPENDIX A TO APPENDIX "E"**

Operating authority authorized to be acquired and retained by The L. Nelson & Sons Transportation Co.

IRREGULAR ROUTES:

General commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between points in Massachusetts.

Between the Town of Hardwick, Mass., on the one hand, and on the other, New York, N. Y., and points in New York and New Jersey within 20 miles of New York, N. Y.

Sanitary napkins, facial tissues, and machinery,

From Hardwick, Mass., to Boston, Mass., New York, N. Y., and points in New York and New Jersey within 20 miles of New York, N. Y.

Materials used or useful in the manufacture and sale of sanitary napkins and facial tissues,

From New York, N. Y., and points in New York and New Jersey within 20 miles of New York, N. Y., to Hardwick, Mass.,

Return with no transportation for compensation, except as otherwise authorized, to above-specified origin points.

General commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between Palmer, Mass., and points in Massachusetts within ten miles of Palmer, on the one hand, and, on the other, points in Connecticut and Rhode Island;

Between Palmer and Monson, Mass., on the one hand, and, on the other, points in Massachusetts within five miles of Palmer and Monson.

Household goods as defined by the Commission,

Between Palmer, Mass., and points in Massachusetts within ten miles of Palmer, on the one hand, and, on the other, points in Vermont.

[fol. 97] Between Hardwick, Mass., on the one hand, and, on the other, points in Connecticut, New Jersey, New York, and Rhode Island.

Livestock.

Between Palmer, Mass., and points in Massachusetts within ten miles of Palmer, on the one hand, and, on the other, points in Vermont.

[fol. 98]

APPENDIX "F" TO COMPLAINT

INTERSTATE COMMERCE COMMISSION

DATE OF SERVICE
MAR 3—1958No. MC-F-6099¹THE L. NELSON & SONS TRANSPORTATION CO.—
CONTROL AND MERGER—
GILBERTVILLE TRUCKING CO., INC.

Decided February 26, 1958.

1. In No. MC-F-6099, application of The L. Nelson & Sons Transportation Co., for authority to acquire control of Gilbertville Trucking Co., Inc., through purchase of capital stock, for merger into the former of the operating rights and property of the latter for ownership, management and operation, and for the acquisition by Clifford J. O. Nelson and Charles G. Chilberg of control of the operating rights and property through the control and merger, denied.
2. In No. MC-F-6178, upon investigation, the control and management of The L. Nelson & Sons Transportation Co., in a common interest with Gilbertville Trucking Co., Inc., found to have been effectuated and to be continuing in violation of section 5(4), Interstate Commerce Act. Order entered directing termination of such violation.

Mary E. Kelley for applicants and respondents.

Francis E. Barrett, Francis E. Barrett, Jr., Robert G. Bleakney, Jr., Hugh M. Joseloff, William Q. Keenan, James G. Lane, T. W. Murrett, Arthur J. Piken, and Kenneth B. Williams for protestants in No. MC-F-6099 and interested parties in No. MC-F-6178.

¹ This report embraces No. MC-F-6178. The L. Nelson & Sons Transportation Co.—Investigation of Control—Gilbertville Trucking Co., Inc.

Ellis F. Gregory, Nell Guinn and Herman F. Mueller for Bureau of Inquiry and Compliance, Interstate Commerce Commission.

REPORT OF THE COMMISSION

DIVISION 4. COMMISSIONERS WINCHELL, MINOR AND WALRATH

BY DIVISION 4:

Exceptions were filed by applicants, the Bureau of Inquiry and Compliance, herein called the Bureau, and certain rail and motor protestants to the examiner's proposed report in No. MC-F-6099, and applicants and the [fol. 99] protestants replied to each other. Applicant's exceptions contain a petition requesting a waiver of Rule 1.86 of the General Rules of Practice for the reasons hereinafter stated. Our conclusions in No. MC-F-6099 differ from those of the examiner:

The E. Nelson & Sons Transportation Co., of Ellington, Conn., and Gilbertville Trucking Co., Inc., of Gilbertville, Mass., herein called Nelson and Gilbertville, respectively, by joint application filed October 6, 1955, in No. MC-F-6099, seek authority under section 5 of the Interstate Commerce Act for (1) the acquisition by Nelson of control of Gilbertville through purchase of its capital stock, and (2) merger of the operating rights and property of the latter into the former for ownership, management, and operation. In the same application, Clifford J. O. Nelson, of Dover, Mass., and his half brother, Charles G. Chilberg, of Rockville, Conn., who control Nelson through equal ownership of 91.5 percent of its outstanding capital stock, seek authority under the same section to acquire concurrent control of Gilbertville's operating rights and property through the transaction. Nelson and Gilbertville operate more than 20 motor vehicles.

In No. MC-F-6178, the Commission, division 4, on its own motion, by order entered December 20, 1955, instituted an investigation under section 5(7) of the Interstate Commerce Act to determine whether control or management

of Gilbertville in a common interest with Nelson may have been effectuated and may be continuing in violation of section 5(4) of the act. Gilbertville, Nelson, Clifford J. O. Nelson, Charles G. Chilberg, Greta C. Carlson, a sister, and Kenneth A. H. Nelson, a brother, were made respondents.

[fol. 100] A hearing of the two proceedings on a consolidated record has been held, at which 13 motor common carriers and rail carriers in eastern territory opposed the application and appeared as interested parties in the investigation. The applicants-respondents, the motor carrier protestants, and the Bureau introduced evidence. Briefs were filed by the applicants-respondents, the Bureau, and by all but the last six named motor carrier protestants. No exceptions are taken by the parties to the factual statements in the examiner's report, and they are adopted as our own without being restated, except to the extent necessary for clarity.

Nelson and Gilbertville are motor common carriers. The former holds irregular-route rights to transport principally materials used in the manufacture of cloth, waste materials resulting therefrom, and supplies and materials used in connection therewith, between specified points in Massachusetts and specified points in New Hampshire and Rhode Island, and between certain Rhode Island and Connecticut points and an area comprising approximately the eastern two-thirds of Massachusetts, on the one hand, and, on the other, New York, N. Y., certain New Jersey points, and Philadelphia, Pa. Gilbertville holds rights to transport general commodities (1) over numerous combinations of regular routes between Lowell and Boston, Mass., and (2) over irregular routes principally (a) between points in Massachusetts, (b) between the town

² The Adley Express Company, Alvin R. Holmes, doing business as Holmes Transportation Service and/or Jones Express, Hemingway Bros. Trucking Co., M&M Transportation Company, Newburgh Transfer, Inc., P. B. Mutrie Motor Transportation, Inc., Taylor's Express Co., Jackson Transportation Corp., Lombard Bros., Inc., National Transportation Co., Downing and Perkins, Inc., H. T. Smith Express Co., and Westchester Motor Lines, Inc.

of Hardwick, Mass., on the one hand, and, on the other, New York City and points in New York and New Jersey within 20 miles thereof, and (c) between Palmer, Mass., and points within 10 miles thereof, on the one hand, and, on the other, points in Connecticut and Rhode Island. It may also transport certain specified commodities. Since about March 1953, all of Gilbertville's outstanding stock has been owned by Kenneth Nelson, or persons closely identified with him or with Nelson.

Under the transaction in No. MC-F-6090, Nelson would acquire all of Gilbertville's outstanding stock, exchanging therefor shares of its own stock having an aggregate net book value equal to the aggregate net book value of Gilbertville's stock as of the date of consummation. Nelson would then take over all the assets and assume all the liabilities of Gilbertville and surrender its charter for cancellation. Had the transaction been effected July 31, 1956, Kenneth Nelson would have received 78 shares of Nelson's stock in the exchange.

Although finding that the respondents had effectuated and were continuing the control or management of Gilbertville in a common interest with Nelson in violation of section 5(4), the examiner further found that the proposed stock acquisition by Nelson, to be followed by the merger, would be consistent with the public interest, provided that the usual condition respecting amortization were imposed, and provided that the cancellation of certain unexercised [fol. 102] authority of Gilbertville coincidentally with consummation were required. As to the unlawful common control, he expressed the view that the facts developed of record placed that question on the "borderline" but that, notwithstanding no single act, practice, or arrangement between the applicants-respondents established such unlawful control, the cumulative effect of the closely related factors, and the circumstances surrounding them, require such a finding. He concluded, however, that the evidence did not establish that the violations shown and the circumstances under which they occurred were the result of a persistent disregard for regulation, but stemmed from ignorance and carelessness, rather than from any wilfulness on the part of the

respondents. As to the proposed merger, he found that savings in transportation costs and improvements in service resulting therefrom were desirable in the public interest, warranting approval of the transaction.

None of the parties challenges the examiner's findings of unlawful control, the applicants-respondents only comment thereon in their exceptions being that they are perplexed by his findings in this regard. However, in order to preserve their rights as provided under Rule 1.87 of the General Rules of Practice, herein called the Rules, applicants-respondents in their exceptions renew their objections to rulings by the presiding examiner at the hearing which they describe as follows: (1) in directing that the hearing in No. MC-F-6099 go forward first, (2) in permitting the opposition under the guise of cross-examining applicants' witnesses therein to propound questions to bolster their position in the investigation proceeding, (3) [fol. 103], in permitting certain testimony of a hearsay nature to be made a part of the record, (4) in prohibiting respondent's counsel from cross-examining certain witnesses respecting regulations of this Commission, and the law applicable to the matters alleged to have been unlawful, (5) in permitting an examination on and the introduction in evidence of a certain undated teletype message, and (6) in failing to accept certain financial data tendered. Under Rule 1.74 of the Rules, the presiding officer has the option of determining whether on a consolidated record an application or investigation proceeding is to be heard first, and, in our opinion, his ruling here did not prejudice the parties. We have examined the facts pertinent to the other contentions and the examiner's rulings thereon and find that, except with respect to the teletype message, discussed later, the contentions of applicants-respondents are not justified.

In our opinion, the examiner should not have received in evidence as an exhibit copy of the teletype message, or authorized the taking of testimony in regard thereto, over the applicants-respondents over objection. The message is undated, the sender and receiver and the location of the sending and receiving points are not identified, the message itself is incoherent and incomplete, and there is no

evidence showing that the directives therein were actually put into effect. We accordingly have disregarded the aforesaid exhibit and testimony relating thereto in the disposition of these proceedings.

[fol. 104] Among Gilbertville's operating rights directed to be canceled by the examiner should the merger be consummated are those authorizing the transportation of sanitary napkins, facial tissues and paper boxes, over a regular route between New York City and Wilmington, Del., over U. S. Highways 1 and 13, serving the intermediate point of Philadelphia and the off-route point of Rockland, Del. Applicants urge that these operating rights also be authorized to be retained by Nelson, contending that the Commission in granting these and similar rights (irregular-route general-commodity rights between the town of Hardwick and New York City), recognized that the shippers of such products were entitled to a complete service, and that Gilbertville has performed the service, several Wheelwright, Mass.-Philadelphia shipments having been shown to have moved by its line as far south as New York City and there interchanged, and one through shipment having been moved by it in the reverse direction from Rockland to Wheelwright. They do not object to the other cancellations proposed by the examiner. In their petition accompanying their exceptions, applicants request waiver of Rule 1.86 of the Rules in order to incorporate as part of the record an accompanying list of shipments of napkins and tissue represented as having been handled by Gilbertville under the above rights at various times between June 15, 1956, and May 29, 1957, both inclusive. Protestants object to the introduction of this additional information at this late date, certain rail protestants contending that under the above Rule arrangements for such supplementation of the record should have been made before the close [fol. 105] of the hearing. Rule 1.86 provides, in part, that, except as directed by the presiding officer at the hearing, or as expressly permitted in particular instances, the Commission will not receive in evidence or consider as part of the record any documents submitted for consideration after the close of the hearing. As pointed out by certain motor protestants, all the shipments in the list moved long after the instant application was filed, in fact only 10 before the

close of the hearing. In view of the above, and protestants' objections to the receipt of the additional information at this late date, applicants' petition is denied. In view of our conclusions, it is unnecessary to consider further applicants' contention in respect of the regular-route special-commodity rights just described.

Protestants and the Bureau except to the examiner's findings that the section-5 application should be approved, contending that instead it should be denied because of the unfitness of the parties. They argue that he erred in finding that the violations do not establish a persistent disregard for regulation, but have been the result of ignorance and carelessness and not wilfulness; in excusing the violations on the grounds of youth and inexperience; in concluding that a finding of unfitness by reason of the violations was not warranted; and, finally, in failing to recommend a divestiture in view of the findings that section 5(4) had been and is being violated. The protestant carriers also argue that the examiner erred in failing to find that the transaction as proposed would adversely affect existing carriers. As to the violations, protestants and the Bureau assert that, although young in years, the Nelson and Gilbertville officers are old in experience, and [fol. 106] that to approve the control and merger would be tantamount to issuing an invitation to carriers that all they have to do is consummate with the assurance that a liberal Commission will bless their *coup d'etat*. They urge that the examiner has failed to appreciate that a new pattern of operations built upon a prior unlawful assumption of control is entitled to no more consideration than dormant operations, and, as to his conclusion that the competition feared by protestants is either already an accomplished fact or capable of becoming so regardless of whether the transaction is approved, protestants maintain this would be a good argument and entitled to consideration if based on a legitimate competitive evolution, which is not the case here. They also state that another reason for denial is the difficulty of policing the unified operations, both from the standpoint of seeing that appropriate gateways are used and only lawfully authorized traffic is transported, which difficulties they urge outweigh any possible

public benefits, indeed the present textile products handled direct by Nelson might be delayed by reason of their being comingled in the same equipment with Gilbertville's other authorized commodities which require routings through circuitous gateways.

In their reply, applicants-respondents assert that none of the exceptants questions Nelson's financial fitness, and that both it and Gilbertville have excellent safety records. They urge that the leasing by Gilbertville of certain of Nelson's equipment and terminal facilities, the part-time employment by each of the same drivers within the same pay period, the maintenance of duplicate medical certificates for drivers in the files of each carrier, the billing by Nelson [fol. 107] of all shipments interlined with Gilbertville, and the finding of relatively few Gilbertville shipments moving with Nelson's shipments on the latter's trailers do not provide a sufficient basis for finding that the applicants are unfit. They state that numerous carriers have been found to be fit, notwithstanding they lease equipment, use common terminals and employ some of the same personnel, such as drivers and accountants; that some of the drivers here are also hired part-time by other carriers, which, with the keeping of duplicate medical certificates, is generally a recognized practice in the industry; that there is no regulation prescribing which carrier actually must prepare the billing for shipments; and as to certain of Gilbertville's traffic alleged to have been comingled with Nelson's traffic, attention is called by the parties to the fact that one shipment involved an intrastate movement, and as to certain other traffic it is impossible to determine from the record whether such shipment was being actually used in the textile industry, but, if so, Nelson could have handled the shipment under its own rights. They contend that as to the one incident where a teletype message was destroyed, it is obvious that the Commission representative was convinced that the person guilty of the act was not then familiar with Commission regulations requiring their preservation, thus supporting the examiner's finding that the act of destruction was not wilful. They argue that when considering the substantial volume of traffic handled by Nelson and Gilbertville, the many carriers with which each interlines,

and the keen competition among the carriers in the New [fol. 108] England area, it is inconceivable that any substantial deviation from this Commission's regulations would escape the attention of competitors and would remain unreported. They assert that it is significant here that not one protestant has offered evidence of its own concerning a violation. Respecting the resulting circuitous operations, applicants-respondents state that protestants have completely overlooked the fact that the slight increase in operating expenses by operating circuitously (estimated by counsel to be approximately 28 miles longer via the Hardwick gateway than via the shortest route between Boston and New York City), would be more than offset by the increased revenues from operating loaded trailers instead of the partial loads of textile products now transported by Nelson. They state that the examiner recognized that an approval and consummation of the transaction as proposed under section 5 would terminate the practices which have been found objectionable, and that, should this Commission conclude to deny the application, there would be no necessity for the entry of a cease and desist order as applicants-respondents have taken and will voluntarily take corrective action to eliminate the objectionable practices and conditions. Finally, they urge that protestants have taken no exceptions to the examiner's findings that no particular loss of traffic by protestants has been shown as a result of the applicants-respondents operations, and that the economies and improvements in service resulting from the unification as found by the examiner based on the evidence, clearly meet the requirements of the law and warrant his ultimate finding that the transaction would be consistent with the public interest.

[fol. 109] As previously stated, no party of record excepts to the examiner's findings that the respondents have effectuated or participated in the effectuation of the control and management of Nelson in a common interest with Gilbertville in violation of section 5(4), and that the violation is continuing. In view of our conclusions herein, it appears desirable to restate briefly certain of the salient facts providing the basis for that finding. The four individuals named as respondents are the children of Mrs.

Linnea Nelson, deceased, and with three other children hold an equal number of shares of stock in Bergson Company, a real estate holding company, herein called Bergson. Respondent Kenneth Nelson's connection with Nelson as an officer, director and stockholder was terminated in September 1951, when he sold his 50 shares of its stock to his brother, Clifford. An additional 42 shares of Nelson's stock which he had inherited from his mother were, pursuant to an agreement executed in September 1951, also transferred to Clifford immediately following a distribution of the estate in January 1953. Kenneth Nelson did not, however, entirely disassociate himself from Nelson in 1951 following the above stock sale. He continued to have an office at its Connecticut headquarters, and, during 1952, before his purchase of Gilbertville's stock, received a salary of \$15,650 from Nelson as its "free lance" tariff consultant. Such employment continued in 1953 even after he had acquired Gilbertville's stock on March 1, 1953, and resulted in the payment of a salary to him by Nelson aggregating \$13,829.

Bergson's properties include three terminals, one being Nelson's Connecticut headquarters and leased to it. Nelson [fol. 110] in turn sublets space therein to Gilbertville. Another independently owned terminal located at New York City, is used by Nelson, Gilbertville, R. A. Byrnes, Incorporated, a motor carrier which is controlled through stock ownership by Clifford Nelson and Charles Chilberg, and by another carrier. Nelson and Gilbertville have the same telephone numbers at seven locations connected by leased interterminal lines, the total rental payments being initially borne by Nelson which is then partially reimbursed by Gilbertville.

Gilbertville regularly leases motor vehicles from Nelson, and at its own Gilbertville terminal and the shared terminal in Connecticut maintains lists of Nelson-owned equipment and prepared lease forms to facilitate the leasing of equipment. At the same point it has a complete file of doctor's certificates for all Nelson's drivers. On a number of occasions the same driver has been employed by both Nelson and Gilbertville during the same pay period. If Nelson or Gilbertville is handling a shipment destined to a point on

the lines of the other, it has been the practice in the past for a vehicle to be leased to the destination carrier by the origin carrier and to use the same driver to move the equipment through.

Nelson and Gilbertville have given favorable consideration to each other concerning intercompany accounts, Gilbertville receiving such consideration respecting equipment rentals owed Nelson, the Nelson respecting interline settlements due Gilbertville. At least 25 percent of the repairs on Gilbertville's motor vehicles have been made in Nelson's shop at the Connecticut terminal, where it also has prepared all billing on the shipments interlined with Gilbertville, whether the shipment was prepaid or collect and irrespective as to which carrier originated the shipment. Although Nelson and Gilbertville interline traffic with numerous other carriers as well as with each other, where they provide the service jointly the division of the revenue remains constant regardless of the length of the haul, whereas, customarily, such divisions between carriers are on a mileage pro rata basis.

Aside from the question as to whether the above constitutes unlawful common control, Gilbertville or Nelson have on various occasions violated the provisions of section 206 and certain regulations promulgated under part II of the act, including the performance of transportation service beyond the scope of their operating authorities, failing to observe proper gateways for traffic interchange, destroying records, and failing to have certain safety equipment on motor equipment, or failing to maintain same in safe operating condition.

We concur in the examiner's conclusion that Nelson and Gilbertville are controlled or managed in a common interest in violation of section 5(4), our finding in this respect not being based on any single factor or several selected from the whole, but on the entire chain of circumstances revealed by the record. Having so found, the question for determination is whether we nevertheless should approve the transaction as proposed under section 5, the consummation of which would automatically terminate such violation for the future. Closely associated with the above, is the question [fol. 112] as to whether, in view of the violation, Nelson

would be a fit person to conduct the unified operations. We have on numerous prior occasions approved transactions involving partial or complete consummation where we have been able to find that such act, although unlawful, had not been deliberately effectuated and the transaction otherwise would be consistent with the public interest. Clearly, however, action adverse to the interest of the applicants can be taken, based on a finding of a violation of section 5(4). This was done recently in *Smithsons Holdings—Control—Ontario Frt. Lines Corp.*, 70 M.C.C. 623, decided August 13, 1957. Also, as the acquiring party applicant's fitness, financial and otherwise, is an issue in a section 5(2) proceeding, the authority sought may be withheld, if the circumstances warrant, based on other violations. See *Powell—Purchase—Rampy*, 57 M.C.C. 597. It should also be observed that the act clearly intends that our consideration be given to "proposed" transactions under section 5. *Congdon—Purchase—Wadkins*, 50 M.C.C. 781. By premature consummation, viz., effecting, as here, the unlawful control and management in a common interest, we are impeded in the discharge of our statutory duty to consider the entire transaction in all its aspects. *Texas, New Mexico & Oklahoma Coaches, Inc.—Pur.—Aaron*, 55 M.C.C. 269.

When regulation of motor carrier transportation under the act was in its earlier stages, there were many instances when transactions under section 5 were approved, notwithstanding a showing of law violation, because the paramount public interest warranted approval. Now, after more [fol. 113] than 20 years of regulatory experience, a more stringent approach is warranted, not as a penalty to these particular respondents, but in recognition that a violation of the law should not be rewarded, and that existing carriers endeavoring faithfully to comply with the law should be encouraged and protected. It should be emphasized that Nelson's and Gilbertville's principals are not new to transportation, or to section 5 proceedings. Charles Chilberg has been associated with Nelson or its predecessor since 1930. He and his half-brother Clifford Nelson have been parties in other section 5 proceedings. See *L. Nelson & Sons Transp. Co.—Purchase—White's Exp.*, 59 M.C.C. 675.

and No. MC-F-5749, *Charles G. Chilberg and Clifford J. O. Nelson—Control—R. A. Byrnes, Incorporated*, — M.C.C. —, decided May 15, 1956. Kenneth Nelson, Gilbertville's principal stockholder, was associated with Nelson as long ago as 1948, and by the evidence herein has indicated that he is familiar with the obligations imposed on carriers under the act and prior decisions by the care with which he has been instructing Gilbertville's drivers in the use of specific gateway points when performing through operations under separately described portions of its authority. Considering all the circumstances, we are of the opinion that the violations of the law and of the regulations should not be "blessed" by approval in No. MC-F-6099, but rather, that respondents should be directed to terminate the unlawful control and management in a common interest. They will also be expected to cease the other violations. In view of our conclusions, it is unnecessary to consider other contentions of the parties.

[fol. 114] We find, in No. MC-F-6099, that the transaction has not been shown to be consistent with the public interest, and that the application accordingly should be denied.

We further find, in No. MC-F-6178, that the control and management of The L. Nelson & Sons Transportation Co., in a common interest with Gilbertville Trucking Co., Inc., has been effectuated and is continuing in violation of section 5(4) of the Interstate Commerce Act, and that the respondents The L. Nelson & Sons Transportation Co., Gilbertville Trucking Co., Inc., Charles G. Chilberg, Clifford J. O. Nelson, Greta C. Carlson, and Kenneth A. H. Nelson, have participated in the effectuation of such control and management in a common interest, and that said respondents are participating in its continuance.

An appropriate order, which will deny the application and require the respondents named above to terminate the violation of section 5(4) of the act, will be entered.

COMMISSIONER WINCHELL dissents.

[fol. 115]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 26th day of February, A. D. 1958.

No. MC-F-6099

THE L. NELSON & SONS TRANSPORTATION CO.—
CONTROL AND MERGER—
GILBERTVILLE TRUCKING CO., INC.

No. MC-F-6178

THE L. NELSON & SONS TRANSPORTATION CO.—
INVESTIGATION OF CONTROL—
GILBERTVILLE TRUCKING CO., INC.

Investigation of the matters and things involved in these proceedings having been made, and said division, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report and the report of the examiner are hereby made a part hereof:

It is ordered. That the application in No. MC-F-6099 be, and it is hereby, denied.

It is further ordered. That in No. MC-F-6178, respondents The L. Nelson & Sons Transportation Co., and Gilbertville Trucking Co., Inc., both corporations, and Charles G. Chilberg, Clifford J. O. Nelson, Greta C. Carlson and Kenneth A. H. Nelson, individuals, and each of them, be, and they are hereby, required to terminate the violation of the provisions of section 5(4) of the Interstate Commerce Act, found in the said report to have been accomplished and to be continuing through the control or management of The L. Nelson & Sons Transportation Co., of Ellington, Conn., in a common interest with Gilbertville Trucking Co., Inc., of Gilbertville, Mass.

And it is further ordered. That The L. Nelson & Sons Transportation Co., and Gilbertville Trucking Co., Inc., both corporations, and Charles G. Chilberg, Clifford J. O. Nelson,

Greta C. Carlson, and Kenneth A. H. Nelson, individuals, shall report to this Commission, within 60 days from the date hereof, the steps taken by each of them to comply with the requirements of this order with respect to termination of the said violation of section 5(4) of the act.

By the Commission, division 4.

HAROLD D. MCCOY,
Secretary.

(SEAL)

[fol. 116]

APPENDIX "G" TO COMPLAINT

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 2nd day of October, A. D. 1958.

No. MC-F-6099

THE L. NELSON & SONS TRANSPORTATION CO.—
CONTROL AND MERGER—
GILBERTVILLE TRUCKING CO., INC.

No. MC-F-6178

THE L. NELSON & SONS TRANSPORTATION CO.—
INVESTIGATION OF CONTROL—
GILBERTVILLE TRUCKING CO., INC.

Upon further consideration of the record in the above-entitled proceeding, and of

- (1) Petition of applicants-respondents, filed April 1, 1958, for reconsideration of the report and order of February 26, 1958, by Division 4, and for oral argument;
- (2) Joint replies, filed on and after April 21, 1958, to said petition (a) by The Adley Express Company, M. & M. Transportation Company, and Hemingway Brothers Interstate Trucking Company, (b) Downing & Perkins, H. T. Smith Express Company, Lom-

bard Bros., Inc., and National Transportation Company, (c) P. B. Mutrie Motor Transportation, Inc., Alvin R. Holmes, doing business as Holmes Transportation Service and/or Jones Express, Newburgh Transfer, Inc., and Taylor's Express Co., and (d) by the Bureau of Inquiry and Compliance, Interstate Commerce Commission.

- (3) Motion of rail carriers in eastern territory to strike petition of applicants-respondents, filed April 22, 1958,
- (4) Separate motions, filed on and after May 5, 1958, to strike replies of (a) P. B. Mutrie Motor Transportation, Inc., et al., (b) Downing & Perkins, et al., and (c) the Bureau of Inquiry and Compliance,
- (5) Reply of applicants-respondents to motion of rail carriers in eastern territory to strike, filed May 5, 1958, and
- (6) Reply of Bureau of Inquiry and Compliance to motion to strike by applicants-respondents, filed May 23, 1958;

and good cause therefor appearing:

It is ordered, That the proceedings be, and they are hereby, reopened for reconsideration on the present record.

By the Commission, division 4.

HAROLD D. MCCOY,
Secretary.

(SEAL)

[fol. 117]

APPENDIX "H" TO COMPLAINT

ORDER

INTERSTATE COMMERCE COMMISSION

No. MC-F-6099

THE L. NELSON & SONS TRANSPORTATION CO.

(Ellington, Conn.)—

CONTROL AND MERGER—

GILBERTVILLE TRUCKING CO., INC.

(Gilbertville, Mass.)

No. MC-F-6178

THE L. NELSON & SONS TRANSPORTATION CO.—

INVESTIGATION OF CONTROL—

GILBERTVILLE TRUCKING CO., INC.

No. MC-42871 (Sub-No. 3)

THE L. NELSON & SONS

TRANSPORTATION COMPANY

In the matter of postponement of the effective date.

PRESENT: John H. Winchell, Chairman, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceedings, and of a request dated July 15, 1960, on behalf of applicants-respondents for a postponement of the effectiveness of the orders of June 9, 1959, February 15, 1960, and July 5, 1960, to allow time for filing of a complaint in the Federal District Court; and good cause therefor appearing:

It is ordered, That the effective dates of the orders entered in said proceeding on June 9, 1959, February 15, 1960, and July 5, 1960, be, and they are hereby postponed to August 15, 1960.

Dated at Washington, D. C., this 18th day of July, A. D. 1960.

By the Commission, Chairman Winchell.

HAROLD D. MCCOY,
Secretary.

(SEAL)

[fol. 120]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS.

Civil Action No. 60-562-S

GILBERTVILLE TRUCKING CO., INC., THE L. NELSON & SONS
TRANSPORTATION COMPANY, CHARLES G. CHILBERG, CLIF-
FORD J. O. NELSON, GRETA C. CARLSON, and KENNETH A.
H. NELSON, Plaintiffs,

—v.—

THE UNITED STATES OF AMERICA, Defendant,

and

INTERSTATE COMMERCE COMMISSION,

Intervening Defendant.

JOINT ANSWER OF THE UNITED STATES OF AMERICA

AND THE INTERSTATE COMMERCE COMMISSION—

Filed October 13, 1960

The United States of America, defendant, and the Inter-
state Commerce Commission, intervening defendant (the
latter hereinafter called "the Commission"), answer the
complaint of the plaintiffs as follows:

I.

Admit the allegations in Paragraph 1, except the citation
in the seventh line of said paragraph. The correct citation
is 80 M.C.C. 257.

[fol. 121]

II.

Admit the allegations in Paragraphs 2, 3, 4, 5, 6, 7, 8, and 9.

III.

Admit that the allegations in Paragraphs 10, 11, and 12 are true in general, but refer the Court to the certificates No. MC-87431 and MC-42871, Sub 3, both of record in the Commission's proceedings under review, for the details of the operating authorities of Gilbertville Trucking Co., Inc., and of The L. Nelson and Sons Transportation Company, respectively, and for the details as to whether the operating authorities of Nelson and Gilbertville are competitive to any material extent.

IV.

Admit the allegations in Paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.

V.

Admit the allegations in Paragraph 29, and allege that following the filing in Court of the complaint on August 5, 1960, the Commission, by order of August 11, 1960, further extended the effective date of the order of June 9, 1959 (Appendix "B" to the Complaint) until the further order of the Commission. A true copy of that order of August 11, 1960, is attached hereto and made a part of this Answer as Exhibit "A".

VI.

Deny the allegations in Paragraphs 30, 31, and 32.

VII.

Admit the allegation in Paragraph 33.

[fol. 122]

VIII.

For further answer to the complaint, these defendants allege that all of the parties to the proceedings before the

Commission in Dockets Nos. MC-F-6099 and MC-F-6178 were given a full and complete hearing; that the findings and conclusions of the Commission in the reports and orders attacked in the complaint were and are fully supported and justified by the evidence submitted in said proceeding; that in issuing the reports and orders attacked in the complaint, the Commission considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition required by law to be considered, and weighed as well each fact, circumstance and condition called to its attention by the parties to said proceedings by their respective counsel or otherwise, including the plaintiffs; that said reports and orders were not made or entered unreasonably, arbitrarily, capriciously, or in abuse of its discretion; that in issuing said reports and orders, the Commission did not exceed the authority conferred upon it by law; and, except as expressly admitted in this answer, the defendants deny each and every allegation contained in the complaint.

Wherefore, having fully answered, the United States of America, defendant, and the Interstate Commerce Commission, intervening defendant, pray that the relief sought in the complaint be denied, that the complaint be dismissed, [fol. 123] and that judgment be entered for the defendants, with costs against the plaintiffs.

Robert A. Bicks, Assistant Attorney General; John H. D. Wigger, Attorney, Department of Justice, Washington 25, D. C.; Elliot L. Richardson, United States Attorney, Federal Bldg., Boston, 9, Massachusetts, Attorneys for the United States of America.

Robert W. Ginnane, General Counsel; James Y. Piper, Assistant General Counsel, Interstate Commerce Commission, Washington 25, D. C., Attorneys for the Interstate Commerce Commission.

[fol. 124]

EXHIBIT "A" TO JOINT ANSWER

~~ORDER~~

INTERSTATE COMMERCE COMMISSION

No. MC-F-6099

THE L. NELSON & SONS TRANSPORTATION CO.

(Ellington, Conn.)—

CONTROL AND MERGER—

GILBERTVILLE TRUCKING CO., INC.

(Gilbertville Mass.)

No. MC-F-6178

THE L. NELSON & SONS TRANSPORTATION CO.

INVESTIGATION OF CONTROL—

GILBERTVILLE TRUCKING CO., INC.

In the matter of further postponement of the effective date of orders.

PRESENT: John H. Winchell, Chairman, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above entitled proceedings, and of a petition dated August 5, 1960, on behalf of certain of the applicants-respondents for further postponement of the effective dates of the orders entered in these proceedings on June 9, 1959, February 15, 1960, and July 5, 1960, as last postponed to become effective on August 15, 1960 by order of July 18, 1960, by reason of the pendency of a complaint filed on August 5, 1960 by the applicants-respondents in the United States District Court for the District of Massachusetts in *Gilbertville Trucking Co., Inc., et al. v. United States*, Civil Action No. 60-562-S, to review the first three of the above-mentioned orders; and good cause therefor appearing:

It is ordered, That the order of July 18, 1960 be, and it is hereby vacated and set aside.

And it is further ordered, That the effective dates of the orders entered in said proceedings on June 9, 1959,

February 15, 1960, and July 5, 1960, be, and they are hereby, further postponed until further order of the Commission.

Dated at Washington, D. C., this 11th day of August, A.D. 1960.

By the Commission, Chairman Winchell.

HAROLD D. MCCOY
Secretary

(SEAL)

[fol. 125] Certificate of Service (omitted in printing).

[fol. 255]

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Civil Action No. 60-562-S

Woodbury, J., Chief Circuit Judge; Sweeney, J.,
Chief District Judge; Wyzanski, J., District
Judge.

GILBERTVILLE TRUCKING COMPANY, INC., et al.,

v.

UNITED STATES OF AMERICA

and

INTERSTATE COMMERCE COMMISSION.

Stenographic Record of May 10, 1961

APPEARANCES.

Henry E. Foley, Esq., Lloyd M. Starrett, Esq., Mary E. Kelley, Esq., for the Plaintiffs.

James Y. Piper, Esq., James W. Noonan, Esq., for the Defendants.

Court Room No. 1,
Federal Bldg., Boston Mass.

Wednesday, May 10, 1961.

[fol. 256]

OFFERS IN EVIDENCE

Mr. Starrett. May it please the Court, there are various items of evidence essentially in the record before the Commission in this case. We offer the application under Section 52 and the order initiating the investigation.

We offer the order setting the matter for hearing before an Examiner, and certified in two volumes the transcript of all the testimony before the Examiner.

We offer all the exhibits that were before the Commission.

[fol. 257] We offer the exceptions to the Examiner's report, the petition for reconsideration and the order of the Commission by Division 4, the petition for reconsideration, and so forth, of the order of the Commission, and finally, a petition dated March 7, 1960.

We offer here, or either offer or furnish to the Court, for the Court's assistance in taking judicial notice of the case, the order entered by the Commission in the matter of the acquisition by Gilbertville Trucking Company of certain rights of a company doing business as Wolff's Express, which is Docket Number MC-F-57090.

May it please the Court, the majority of the orders, all of the orders that are pertinent, other than those which have just come in, and the three reports emanating from the these parts of the Commission, are all attached to the complaint and are admitted by the answer.

There is one further order, and that is the order postponing the effective date of the order of the Commission until further order of the Commission, in the light of this proceeding. That is attached as Exhibit A to the answer, and we admit that that is a true copy.

[fol. 285]

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Woodbury. The title doesn't help me much. We don't know what he did. I think it is more important to know what he did than what he was called. But what is a tariff consultant? Does he just simply figure out tariffs, or does he route various shipments, or what does he do?

Mr. Piper. I don't know. The record here doesn't show. We know there is such a thing as a tariff consultant; some lawyers are called tariff consultants.

[fol. 288] Judge Wyzanski. Is there any evidence whatsoever that he acted as tariff consultant after March?

Mr. Piper. No, I can't say there is any evidence he acted as tariff consultant. So the next step in the proceeding—

Judge Woodbury. I am looking now at the report of the Commission on reconsideration at page 263.

Mr. Piper. Yes, sir.

Judge Woodbury. The last sentence in the first full paragraph on the page; (reading)

"However, from September 1, 1951 to March 1, 1953 Kenneth had an office in one of Nelson's terminals, where as a 'free-lance' tariff consultant he served only Nelson, and was paid by Nelson \$15,650 in 1952 and [fol. 289] \$13,829 in 1953".

Now, that takes him from September 1, 1951 to March 1, 1953.

Mr. Piper. That is right.

Judge Woodbury. That is what the Commission found.

Mr. Piper. That is right.

Judge Woodbury. And pursuant to that finding he wasn't a free-lance tariff consultant serving only Nelson after the time he bought the stock in Gilbertville.

Mr. Piper. The statement I made with respect to his having Nelson as his sole client involved the time he was acting as tariff consultant.

Judge Woodbury. I am not disputing you. I agreed with you there.

Mr. Piper. The record doesn't show a thing with respect to what happened after March 1, 1953.

Judge Woodbury. What I am getting at is this: there was no period of time in which his services as tariff consultant and his ownership of the Gilbertville stock overlapped; isn't that right?

Mr. Piper. I can't say that I quite agree with that, your Honor. It all depends on the interpretation you give it.

Judge Woodbury. That is the way I read it.

Mr. Piper. That's what the Commission says.

Judge Woodbury. Well, haven't we got to take what the Commission says as the fact?

[fol. 290] Mr. Piper. The Commission adopted these facts from the Division 4 report, and the Division adopted them from the Examiner's report. The underlying facts of record which I have indicated at page 19 of our brief are very simple. Your Honor just read it. I have noted here: (reading)

"Kenneth had an office at one of Nelson's terminals where as tariff consultant he served only Nelson".

transcript page 180 to 182, 269 to 274, and 422 to 427, and the Examiner's report sheet 44.

Those are the points of the record that support that statement.

Judge Woodbury. We will check it.

Mr. Piper. That is all I can express on that at this time.

[fol. 291] Judge Wyzanski. Would it not be fair to say that the term free lance means that the person holds himself out to serve clients of any kind, and free lance means that he is not an employee, he is not exclusively working for somebody, but the term means available to serve as an independent person whoever he wishes to serve?

Mr. Piper. I can agree with that, your Honor. The only point I raise is that there is nothing of record to indicate that Kenneth Nelson served any other client as tariff consultant besides L. Nelson.

Judge Wyzanski. But on whom is the burden to prove that he served only one?

[fol. 292] Mr. Piper. Who has the burden to prove that he served only one?

Judge Wyzanski. Yes.

Mr. Piper. This came out in the application proceedings, this testimony.

Judge Wyzanski. But you are trying to prove, or rather the Commission and the Examiner were concerned with

making a finding as to in whose interest the company was being operated; isn't that right?

Mr. Piper. That is right.

Judge Wyzanski. And therefore, it becomes the burden of those who seek to show that, to prove that the relationship between Nelson and any particular company is one of undivided loyalty; isn't that right?

Mr. Piper. I guess that is correct, your Honor. But from the point of view of the Commission, of Division 4 and the entire Commission, the investigators in the investigation had sustained that burden of proof.

[fol. 294] Judge Wyzanski. Excuse me. At the time he bought—there was never a period of time, was there, when he was both a tariff consultant and the owner of Gilbertville? Was there any moment?

Mr. Piper. That is why—the only answer I can give you at this time is to refer you to the excerpts from the testimony that I have indicated on page 19 with respect to that point.

[fol. 303] Judge Wyzanski. If there were not a fraternal relationship, how would the situation differ from the case in which a former lawyer, having learned through service for his client, chose to invest in a comparable enterprise to that as to which he had previously acted as counsel?

Mr. Piper. It wouldn't differ at all. Your Honor put his finger right on one of the points contended by the Commission. This was a family relationship. The Examiner so held. It was a family relationship they had been in, L. Nelson & Sons, for some years.

[fol. 307] Judge Woodbury. Is that a rare practice among carriers that are not affiliated, to share terminal space or something of that sort?

Mr. Piper. I am not saying that any one of these is enough to make this finding of—

Q Judge Woodbury. No, but that is a common practice among carriers.

[fol. 313] Mr. Foley. I am not positive that the record [fol. 314] has been admitted in evidence. Might that be clear? Has it been admitted?

Judge Woodbury. I thought it had. Didn't Mr. Starrett offer it at the beginning?

Mr. Foley. He offered it, but I don't know that the record shows that it was received by the Court.

Judge Woodbury. Well, there having been no objection, these offered exhibits are all accepted.

Mr. Piper. Are they all one exhibit, or are they going to be given a different number?

Judge Woodbury. One exhibit.

Mr. Piper. Call it Plaintiff's Exhibit A.

Judge Woodbury. I mean, there was no objection. These papers were offered by Mr. Starrett at the outset of the hearing and there was no objection heard. I don't know if you went through the formality of having them marked. But I guess they are all here.

[fol. 319]

IN UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Civil Action 60-562-S

GILBERTVILLE TRUCKING CO., INC., THE L. NELSON & SONS
TRANSPORTATION COMPANY, CHARLES G. CHILBERG, CLIF-
FORD J. O. NELSON, GRETA C. CARLSON, AND KENNETH
A. H. NELSON, Plaintiffs,

v.

THE UNITED STATES OF AMERICA; Defendant,

and

INTERSTATE COMMERCE COMMISSION, Intervening Defendant.

Before WOODBURY, Chief Judge, United States Court of
Appeals, SWENEY, Chief Judge, United States District
Court, and WYZANSKI, United States District Judge.

OPINION—July 7, 1961

WYZANSKI, D.J.

Stated briefly, and subject to later amplification, this is a case brought by two motor carriers and four individuals who complain that the I. C. C. has invalidly ordered one of the individuals to divest himself of stock he holds in one of the two carrier companies, and also has invalidly denied the application of one of the two carrier companies to merge into the other carrier company.

The suit in this Court began with a complaint filed August 8, 1960 seeking to enjoin and set aside the following orders of the I. C. C.:

(1) the order of June 9, 1959 entered in No. MC-F-6099, (in the matter of The L. Nelson & Sons Transportation Co.—Control and Merger—Gilbertville Trucking Co., Inc.), and No. MC-F-6178, (in the matter of The L. Nelson & Sons Transportation Co.—Investigation of Control—Gilbertville

Trucking Co., Inc.), [the said order being set forth in the [Tol. 320] complaint as "Appendix B"];

(2) the order of February 15, 1960, entered in the same matters, [the said order being set forth in the complaint as "Appendix C"]; and

(3) the order of July 5, 1960, entered in the aforesaid No. MC-F-6099 and No. MC-F-6178, and also in No. MC-42871 (Sub-No. 3) (in the matter of The L. Nelson & Sons Transportation Company), [the said order being set forth in the complaint as "Appendix D"].

Hereafter these will be called orders 1, 2, and 3, respectively.

Jurisdiction to hear the complaint is conferred on this Court by chapters 85, 87, 155, and 157 of the Judicial Code, 28 U.S.C. §§ 1336, 1398, 2284, and 2321-2325.

Administratively, this case began when on October 6, 1955, pursuant to § 5(2) of the Interstate Commerce Act, 49 U.S.C. § 5(2), The L. Nelson & Sons Transportation Company, (hereafter called Nelson Co.), and Gilbertville Trucking Co., Inc. (hereafter called Gilbertville Co.) filed with the I. C. C. an application to merge the operating rights and properties of Nelson Co. as transferee and Gilbertville Co. as transferor. This is the matter to which the I. C. C. gave the number MC-F-6099. The governing Section, § 5(2), provides as follows, so far as pertinent:

"(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b) of this paragraph—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through owner-

ship of their stock or otherwise; or for a person which [§ 321] is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise;”

“(b) Whenever a transaction is proposed under subdivision (a) of this paragraph, the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 305(e) of this title), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing; and a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subdivision (a) of this paragraph and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this chapter, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6) of this section, is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.”

"(c) In passing upon any proposed transaction under the provisions of this paragraph, the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected."

Other relevant sections meriting citation here are §§ 5(4), 5(5) and 5(6), which read as follows:

"§ 5, par. (4). Control effected by other than prescribed methods. It shall be unlawful for any person, except as provided in paragraph (2) of this section, to enter into any transaction within the scope of subdivision (a) of paragraph (2) of this section, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such [fol. 322] result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph and paragraph (5) of this section, the words 'control or management' shall be construed to include the power to exercise control or management. Feb. 4, 1887, c. 104, Pt. I, § 5, 24 Stat. 380; June 16, 1933, c. 91, Title II, § 202, 48 Stat. 217; Sept. 18, 1940, c. 722, Title I, § 7, 54, Stat. 905."

"§ 5, par. (5). Transactions deemed to effectuate control or management. For the purposes of this section, but not in anywise limiting the application of the provisions thereof, any transaction shall be deemed to ac-

comply or effectuate the control or management in a common interest of two carriers—

(a) if such transaction is by a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier;

(b) if such transaction is by a person affiliated with a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier;

(c) if such transaction is by two or more persons acting together, one of whom is a carrier or is affiliated with a carrier, and if the effect of such transaction is to place such persons and carriers and persons affiliated with any one of them and persons affiliated with any such affiliated carrier, taken together, in control of another carrier. Feb. 4, 1887, c. 104, Pt. I, § 5, 24 Stat. 380; June 16, 1933, c. 91, Title II, § 202, 48 Stat. 217; Sept. 18, 1940, c. 722, Title I, § 7, 54 Stat. 905."

§ 5, par. (6). Affiliation with a carrier denied. For the purposes of this section a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organizations or operation, or whether established through common directors, officers, or stockholders, a voting trust, or trusts, a holding or investment company or companies, or any other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier. Feb. 4, 1887, c. 104, Pt. I, § 5, 24 Stat. 380; June 16, 1933, c. 91, Title II, § 202, 48 Stat. 217; Sept. 18, 1940, c. 722, Title I, § 7, 54 Stat. 905."

December 20, 1955, pursuant to § 5(7) of the Act, 49 U.S.C. § 5(7), the I. C. C., reciting that it appeared that control or management of Gilbertville Co. in a common interest with Nelson Co. may have been effectuated and

may be continuing in violation of § 5(4) of the Act, 49 U.S.C. § 5(4), ordered an investigation on the Commission's [fol. 323] own motion. This is the matter to which the I. C. C. gave the number MC-F-6178. The relevant statutory section, § 5(7) reads as follows:

"Investigation by Commission of effectuation of control by nonprescribed methods. The Commission is authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of paragraph (4) of this section. If the Commission finds after such investigation that such person is violating the provisions of such paragraph, it shall by order require such person to take such action as may be necessary, in the opinion of the Commission, to prevent continuance of such violation. The provisions of this paragraph shall be in addition to, and not in substitution for, any other enforcement provisions contained in this chapter; and with respect to any violation of paragraphs (2)-(12) of this section, any penalty provision applying to such a violation by a common carrier subject to this chapter, shall apply to such a violation by any other person. Feb. 4, 1887, c. 104, Pt. I, § 5, 24 Stat. 380; June 16, 1933, c. 91, Title II, § 202, 48 Stat. 217; Aug. 9, 1935, c. 498, § 1, 49 Stat. 543; Sept. 18, 1940, c. 722, Title I, § 7, 54 Stat. 905."

December 20, 1955, the I. C. C. assigned both matters for concurrent hearing on a joint record.

August 16, 1955 the I. C. C. referred these matters to Examiner Baumgartner for hearing on September 17, 1956. September 17 through September 26, 1956, Examiner Baumgartner held the hearing. He served his report June 8, 1957. July 8, 1957 the applicant's filed exceptions to the report. The exceptions being disallowed, the I. C. C., by Division 4, on February 26, 1958 entered a report and an order reciting that "Gilbertville [Co.] or Nelson [Co.] have on various occasions violated the provisions of Section 206, and certain regulations promulgated under Part II of the

Act", and that "Nelson [Co.] and Gilbertville [Co.] are controlled or managed in a common interest in violation of Section 5(4)", and ordering that Nelson Co. and Gilbertville Co. and four individuals, Chilberg, Clifford J. O. Nelson, Greta C. Carlson, and Kenneth A. H. Nelson cease violations of § 5(4) of the Act, and denying the companies' application to merge.

April 1, 1958 the applicants filed with the I. C. C. a petition for reconsideration of, and to set aside, the February 28, 1958 order of the Commission by Division 4.

October 2, 1958, Division 4 re-opened the proceedings. [fol. 324] June 9, 1959 the full Commission entered a report and order. The full Commission recited that it had recalled the proceedings from Division 4 for consideration and determination. Simultaneously the I. C. C. found that Kenneth Nelson had acquired control of Gilbertville Co. about March 2, 1953 in violation of § 5(4) of the Act, and pursuant to the alleged authority of § 5(7) of the Act, ordered him to divest himself of his stock interest in Gilbertville. This is Order 1 under review in this Court.

August 17, 1959 both companies filed with the I. C. C. a petition for reconsideration. February 15, 1960 the I. C. C. denied the petition and made effective the earlier order of June 9, 1959. This February 15, 1960 denial and order constitute Order 2 under review in this Court.

March 7, 1960 Nelson Co. petitioned the I. C. C. for cancellation of all its outstanding certificates of convenience and necessity, coincident with the vacation of the I. C. C. orders of June 9, 1959 and February 15, 1960. March 11, 1960 the I. C. C. temporarily stayed the effectiveness of its orders of June 9, 1959 and February 15, 1960. Then July 5, 1960 the I. C. C. denied the petition of March 7, 1960, vacated the stay order of March 11, 1960, and reinstated its orders of June 9, 1959 and February 15, 1960. This cumulative disposition of July 5, 1960 is Order 3 under review in this Court.

Having portrayed the skeleton of the administrative proceedings before the I. C. C., and before examining in detail the factual record, we may notice the general nature of the principal questions which it presents.

(1) Is the order of June 9, 1959 invalid because it is not supported by findings which in form comply with the provisions of the Administrative Procedure Act or with general [fol. 325] principles governing I. C. C. procedure?

(2) Is the order of June 9, 1959 invalid because, even if the findings are proper in form, they are not supported by substantial evidence?

(3) Is the order of June 9, 1959 invalid because, even if the findings are proper in form and in substance, they lack the specific character adequate to support an order to Kenneth A. H. Nelson to divest himself of all his stock in Gilbertville Trucking Co.?

(4) Is the order of June 9, 1959 invalid because, even if the findings are proper in form and in substance, they do not warrant an order denying the merger application?

We now turn to a more detailed examination of the record before the I. C. C. In appraising this record we repeat that the only orders here under review are orders of the full commission and that the only questions now pertinent, as stated above, fall into two divisions: first, are the full commission's orders sustained by findings, made by it, adequate in form and in substance, and second, are those orders authorized by statutory provisions.

The best way to deal with the first set of questions is to set forth in full the essential portion of the text of the I. C. C. report of June 9, 1959, with the supporting transcript references conveniently supplied by defendants in this Court. But before this is done, it will be helpful to set forth, as it were, a syllabus of their import.

The text, about to be quoted, shows a close business relationship between Kenneth A. H. Nelson, his mother, and her six other children. Originally they were all associated as shareholders in the Nelson Co. And the seven children are even now associated as equal owners of The Bergson Company. In 1952 Kenneth was still the owner of 92 of the 500 shares of the Nelson Co. He was in that year paid [fol. 326] \$15,650 as a "tariff consultant." The nature of this relationship and of this work is not precisely shown. Kenneth claims he held himself out not as an employee or

officer but as an independent contractor; yet if he had clients other than Nelson Co. they were not shown. Moreover, in his work for Nelson his duties (properly inferable from his title, his rate of compensation, and miscellaneous specific minor incidents,) trench upon administrative or executive rather than strictly independent professional advisory functions.

Kenneth continued as tariff consultant during part of 1953. Samol J. Solomon, a public accountant, who had rendered Nelson Co. continuous services almost since its organization (Tr. 28), and who as a principal witness before the I. C. C. was on the stand for several days, testified that Nelson Co. paid Kenneth \$13,800 in 1953, and that some of the services for which that payment was made were performed after Kenneth's acquisition of the stock of Gilbertville Co. (Tr. 427), that is, after March 2, 1953. That date is significant because by a contract dated on that same March 2, 1953, Kenneth in cooperation with his half brother, Oscar Chilberg, and following consultation with Solomon, purchased all the shares of Gilbertville Co.

At a later date, Kenneth bought out Oscar. And the business of Gilbertville Co. continued and flourished under the direction and ownership of Kenneth.

At all times Nelson Co. and Gilbertville Co. shared the lease of a terminal at New York City. At four other terminals, owned by the previously mentioned family company, Bergson Co., Nelson Co. was a lessee, and Gilbertville Co. was a sub-lessee of Nelson Co. Telephones were shared at the terminal.

Equipment of one company is often leased to the other. Both draw upon the same group of drivers to some extent. There has been some commingling of traffic. Some items of [fol. 327] expense are shared upon a set formula, not shown to be other than arbitrary.

From these and other less significant subsidiary items, the I. C. C. purported to "affirm the findings in the prior report [of Division 4] and in the report of the examiner, that the control and management of Nelson [Co.] and Gilbertville [Co.] in a common interest has been effected and is continuing in violation of section 5(4) of the act."

This Court having supplied the foregoing "syllabus", the following quotation from the I. C. C. report of June 9, 1959, to which counsel have added in brackets the opposite transcript references, may now be set forth.

"The evidence shows that Mrs. Linnea ~~Nelson~~, with two of her seven children, Charles and Oscar Chillberg, inaugurated the business of Nelson as a partnership in 1939 [Tr., Chillberg, 480]. It was incorporated in 1947 [Tr., Solomon, 193, and Ex. A to application]. As of May 14, 1948, of the 500 shares of authorized capital stock outstanding, 300 shares were held by Mrs. Nelson and 50 shares each by Charles and Oscar, and Clifford and Kenneth Nelson [Tr., Solomon, 30-31, 194-95]. Mrs. Nelson died in 1950 [Tr., Solomon, 30-31, 194-95] and her stock, less 6 shares which subsequently became treasury stock, was devised 42 shares each to her seven children [Tr., Solomon, 31-32, 194, 212]. In June and September, 1951, and in January 1953, Oscar and Kenneth sold their stock (92 shares each) to Charles and Clifford, respectively, and resigned from the business [Tr., Solomon, 29-30, 32-34, 39, 195-99, 209, 211]. Since the latter date Charles and Clifford have held 226 shares each of the capital stock of Nelson [Tr., Solomon, 202, 213, 215-16, 277-78]. Kenneth and Oscar have been neither officers nor directors since 1951 [Tr., Solomon, 35-36]. However, from September 1, 1951, to March 1, 1953, Kenneth had an office at one of Nelson's terminals where as a "free lance" tariff consultant, he served only Nelson [Tr., Solomon, 180-82, 269-74, 422-27; Ex. Rept., sh. 44], and was paid by Nelson \$15,650 in 1952 [Tr., Solomon, 271-72] and \$13,829 in 1953 [Tr., Solomon, 277, 425-427].

Under a contract of March 2, 1953 [Tr., appl. Ex. 22], after consultation with his accountant and financial adviser [Tr., Solomon, 50-51, 83, 312-13], Kenneth agreed to purchase the capital stock of Gilbertville, consisting of 100 shares, for a net consideration of \$22,447 [Tr., Solomon, 67-68, 358-60], of which \$10,000 was evidenced by a promissory note signed by him and Oscar [Tr., Solomon, 67-69, 324-36, 358-61, 371, 435]. A note of

\$30,000 was secured from a bank on a note signed by the same individuals to help finance the transaction and to furnish Gilbertville with working capital [Tr., Solomon, 55-56, 322-23, 330-31, 370-72, 460-61]. Upon the transfer of that stock 51 shares were held by Kenneth, 48 by Oscar, and 1 share by Kenneth's attorney [fol. 328] [Tr., Solomon, 78-79, 160, 335-36]. In March, 1954, Oscar transferred his shares to Kenneth [Tr., Solomon, 161-62, 332-35] who, in turn, transferred 24 shares each to his wife and to the manager of their terminal at Gilbertville, apparently in name only [Tr., Solomon, 80-83, 161-63, 332-40; K. Nelson, 689-99, 719-23].

The Bergson Company, organized January, 1953, is a real estate holding company [Tr., Solomon, 420], whose 490 shares of stock are owned in equal amounts by the seven children, and they are its directors [Tr., Solomon, 172-73, 421]. Kenneth is not an officer of Bergson [Tr., Solomon, 173]. Of the five terminals utilized by Nelson in its operations, four are leased from Bergson [Tr., Solomon, 172-77, 430-32], including a terminal at Rockville-Ellington, Conn., which is also used as the headquarters of both Nelson and Gilbertville [Tr., Solomon, 148-49; K. Nelson, 699-700, 725]. The latter subleases terminal facilities from Nelson at Rockville-Ellington, Newton, Mass., and Woonsocket, R.I., owned by Bergson [Tr., Solomon, 172-77], and at New York City, owned by other parties [Tr., Solomon, 432, 447]. At a garage and repair shop maintained at Rockville-Ellington, Nelson performs about 25 percent of the repair work on the equipment of Gilbertville [Tr., Solomon, 165-66, 445-46; K. Nelson, 796-99, 824-27; Shea, 888-89, 1120-22].

At two of the terminals, owned by Bergson, at the one in New York City, and at four other points, Nelson and Gilbertville have the same telephone numbers [Tr., Chilberg, 679-80; K. Nelson, 77-78, 786]. The total cost of leased interterminal telephone lines is \$1,100 a month and Gilbertville pays Nelson \$400 a month as sublessee [Tr., Chilberg, 679-81, 692; K. Nelson, 785-86, 805]. Nelson occasionally leases equipment from

Gilbertville [Tr., Solomon, 168-70, 412-13; Chilberg, 484-85, 512-13], although the latter constantly and frequently leases from a pool of equipment maintained by Nelson [Tr., Solomon, 170; Chilberg, 524, 543-46; K. Nelson, 702-13, 819, Shea, 835-37, 844-46, 870; La Cour, 1023, 1029-31]. Both draw upon the same group of drivers [Tr., K. Nelson, 814-19; Shea, 853-54, 883; La Cour, 1005-09] and information relative thereto, including medical certificates, are maintained in the files of both companies [Tr., K. Nelson, 728-29, 814-16]. To the extent they interline [Tr., Chilberg, 495-99, 508; K. Nelson, 738-41], revenues are divided on a fixed percentage basis [Tr., Chilberg, 524-26, 691-92; K. Nelson, 707-09, 741-43; La Cour, 1018-20], and Nelson does all of the billing for such traffic [Tr., Chilberg, 526-28; Shea, 854-59]. Frequently the same driver will be employed by both companies during the same pay period [Tr., K. Nelson, 814-20; Shea, 854, 883; La Cour, 1005-09], and on those occasions where a shipment moves from a point in the territory of one to a point in the territory of the other the same driver and vehicle will perform the through movement [Tr., K. Nelson, 782-83, 807-08; Shea, 1120-22], under prearranged base arrangements [Tr., K. Nelson, 762-69, 813-14; Shea 845-47, 1120-22]. The two companies use the same source for accounting and financial advice [Tr., Solomon, 27-28, 83, 144, 189-91, 348, 440-41], each operates to some extent, at least, under managerial direction from officers of the other [Tr., Shea, 847-53, 860-61; La Cour, 1015-16], and they are liberal with each other in the settlement of intercompany accounts [Tr., La- [fol. 329] Cour, 1021-22, 1028-29]. There has also been a commingling of traffic of the two carriers in the same vehicles whenever it suits their convenience [Tr., Shea, 901-915, 916-22, Com. Ex. 29; 925-932, Com. Ex. 30; 932-36, Com. Ex. 31; 936-40, Com. Ex. 32; La Cour, 1040-50, Com. Ex. 34].

As of March, 1953, Gilbertville had one truck, three tractors, and four trailers [Tr., Solomon, 69-70, and Appl. Ex. 22], and had a deficit in surplus of \$39,868 [Tr., Solomon, 90]. As of December 31, 1953, however,

it had a net worth of \$18,935 [Id]. In 1953 Gilbertville's revenues were \$75,489 [Ex. B-6(3) to application], whereas for the first seven months of 1956 they had increased to \$444,777 [Appl. Ex. 8]. Its equipment increased substantially during that period [Tr., Solomon, 233-38, 245-48, 408, Appl. Ex. 23; K. Nelson, 702-95, Appl. Ex. 25]. In 1953 the revenues of Nelson were \$895,774 [Ex. A-7(3) to application] and for the first seven months of 1956 they were \$630,607 [Appl. Ex. 4]. Under an authority granted by this Commission, Gilbertville, on June 16, 1954, acquired the operating rights of one Louis Marner, doing business as Wolff's Express [Tr., Solomon, 234-35, 389, Ex. B to application, Sh. 6]. In April or May of 1954, Charles Chilberg and Clifford Nelson negotiated for the capital stock of R. A. Byrnes, Incorporated [Tr., Solomon, 386-90], herein called Byrnes, and upon approval of this Commission [on May 15, 1956, Division 4 report, 75 M.C.C. 45, at 54; Appendix "F" to complaint, Sh. 16], the transaction was consummated August 21, 1956 [Tr., Solomon, 389-90, 394-95]. The general-commodity authority of Byrnes [Ex. A to application, Sh. 1] complements that of Gilbertville [Ex. B to Application, Shs. 4 and 5], and by interchange a through service on general commodities can be provided between points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and, on the other, points south thereof to the District of Columbia. Considering all the facts of record, we are of the opinion, and find, that Kenneth Nelson was affiliated with Nelson within the meaning of section 5(6) at the time he purchased the stock of Gilbertville, and that the conclusive presumption of section 5(5) applies; we affirm the findings in the prior report, and in the report of the examiner, that the control and management of Nelson and Gilbertville in a common interest has been effected and is continuing in violation of section 5(4) of the act."

Complainant's initial objection is that the language just quoted and other like passages do not constitute the sort of findings required by § 8b of the Administrative Procedure

Act, 5 U.S.C. § 1007(b), or by established principles appropriately and traditionally governing findings of fact prepared by administrative agencies.

The answer is that it is no more requisite than for agencies than for courts, acting under Rule 52 of Federal Rules of Civil Procedure, slavishly to set forth in wooden, [fol. 330] numbered, footnoted paragraphs every step in the finding process. Cf. *Minneapolis & St. Louis R. Co. v. U.S.*, 361, U.S. 173, 193-194. Some agencies, like some courts, prefer to put findings in narrative form, in the hope of redeeming judicial writing from the charge that it is arid, stilted, or, to borrow Chief Judge Cardozo's happy choice of an adjective, "agglutinative". If a fact-finder has the talent of Justice Holmes, his findings are not to be rejected because they are reminiscent of what (to adopt his three classical categories) Justice Holmes would have called a sting ray rather than a kitchen knife, or a razor blade. The purpose of findings of fact is to furnish the parties and the reviewing court with a sufficiently clear basis for understanding the premises used by the tribunal in preparing its conclusions of law, adjudications, and orders. This purpose the I. C. C. has fulfilled in the case at bar, as is demonstrated by the extended quotations set forth above. Indeed to prescribe for every fact-finder the mechanical process for which complainants plead would in all probability cause agency heads, judges, and others with like responsibility to depart further from the pungent, individualized standard of the best Anglo-American judicial writing and to delegate more than they now do to anonymous law clerks. In the name of formality, rigor, and precision, we may rob the law of that style and distinction, which both reflect personal consideration and show a mastery of the art of successful persuasion.

The I. C. C. findings are satisfactory not merely in form but in substance. The transcript references enclosed in the quotations prove that the statements of the I. C. C. are supported by evidence. Admittedly a modicum of the findings are trivial to the point of demonstrable irrelevance [fol. 331]. But if a reviewing court rejects a particular item as imponderable or inconsequential, that court need not remit the case for excision of that item and for a re-weigh-

ing of the remaining mass. When a web of fact is woven *to enclose one dominant issue of fact*, (here the issue of common control) the pulling out of a few minor strings at points of less than crucial significance does not suggest that the net fails to hold. Nor does it require a new total appraisal.

Here complainants attack the I. C. C. for its inclusion in its report of some innocent conduct, or conduct of ambiguous nature. A reasonable reviewer would not conclude that the deletion of all reference to that conduct would alter or modify the I. C. C.'s ultimate and essential finding "that the control and management of Nelson and Gilbertville in a common interest has been effected and is continuing in violation of section 5(4) of the act."

The next issue is whether as a matter of substantive law the subsidiary findings are adequate to show that sort of "control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly," which is prescribed by § 5(4) of the Act. The comprehensive statutory outlawing indicates a fixed Congressional determination to pierce veils and search for the naked truth. We are to look for the presence of unified power, not to palter over dictionary definitions, nor even to be our own lexicographer. Looking through the veil we see far, far more than one company owned by a brother of the dominant owner of another company, or one company managed by a former professional adviser of another company. Many phases of the two business have been allowed to converge and not just kept running in parallel series. We can see as the I. C. C. could see a design not of mere cooperation but of purposeful dovetailing for a common set of ends. Indeed the whole convergence begins [fol. 332] with the purchase of shares in a second company made by an individual at a moment when he is not shown to have severed a relationship to the arterial traffic nerve of the first company. And after the purchase, the operations of the two companies are so located, so served by employees, so closely identified by common avenues of public communication and approach that the ultimate finding made by the I. C. C. and the derived legal conclusion announced by the I. C. C. are not merely reasonable but inevitable to an

unprejudiced, sophisticated mind. For this Court to reject this finding and this conclusion reached by a body informed of the transportation business and its practices, sensitive to the policy it administers under legislative delegation, would not be merely to usurp an administrative function but to displace a legislative prerogative.

The foregoing reasoning does not (despite complainants' contrary arguments,) require resort to any legislatively enacted definitions or presumptions. But it is meet to observe that the reasoning of the I. C. C. and of this Court is confirmed, and at no juncture contradicted, by the statutory definitions and presumptions. No more is necessary than to quote once more the relevant sections of the Act. Section 5(5) provides:

"For the purposes of this section, but not in anywise limiting the application of the provisions thereof, any transaction shall be deemed to accomplish or effectuate the control or management in a common interest of two carriers—

(a) if such transaction is by a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier;

(b) if such transaction is by a person affiliated with a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier;

(c) if such transaction is by two or more persons acting together, one of whom is a carrier or is affiliated with a carrier, and if the effect of such transaction is to place such persons and carriers and persons affiliated [fol. 333] with any one of them and persons affiliated with any such affiliated carrier, taken together, in control of another carrier."

Section 5(6) provides:

"For the purposes of this section a person shall be held to be affiliated with a carrier if, by reason of the

relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or any other direct or indirect means), it is reasonable to believe that the affairs of of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier."

And Section 1(3)(b) of the Act, 49 U.S.C. § 1(3)(b), which is applicable broadly to motor carriers as well as other carriers, provides:

"For the purposes of sections 5, 12(1), 20, 304(a) (7) 310, 320, 904(b), 910 and 913 of this title, where reference is made to control (in referring to a relationship between any person or persons and another person or persons), such reference shall be construed to include actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation, through or by common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or through or by any other direct or indirect means; and to include the power to exercise control. Feb. 4, 1887, c. 104, Pt. I, § 1, 24 Stat. 379; June 29, 1906, c. 3591, § 1, 34 Stat. 584; June 18, 1910, c. 309, § 7, 36 Stat. 544; Feb. 28, 1920, c. 91, § 400, 41 Stat. 474; June 19, 1934, c. 652, § 602(b), 48 Stat. 1102; Aug. 9, 1935, c. 498, § 1, 49 Stat. 543; Sept. 18, 1940, c. 722, Title I, § 2(a), (b), 54 Stat. 899."

A penultimate issue is whether, having found that § 5(4) of the Act was violated by Kenneth's acquisition of stock in Gilbertville Co., the I. C. C. was empowered to order him to divest himself of the stock. Congress did not specify this remedy. It left the matter at large to the discretion of the I. C. C. The delegated power was conferred by § 5(7) in these words:

"Investigation by Commission of effectuation of control by nonprescribed methods. The Commission is authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of paragraph (4) of this section. If the Commission finds after such investigation that such person is violating the provisions of such paragraph, it shall by order require such person to take such action as may be necessary, in the opinion of the Commission, [fol. 334] to prevent continuance of such violation. The provisions of this paragraph shall be in addition to, and not in substitution for, any other enforcement provisions contained in this chapter; and with respect to any violation of paragraphs (2)-(12) of this section, any penalty provision applying to such a violation by a common carrier subject to this chapter shall apply to such a violation by any other person. Feb. 4, 1887, c. 104, Pt. I, § 5, 24 Stat. 380; June 16, 1933, c. 91, Title II, § 202, 48 Stat. 217; Aug. 9, 1935, c. 498, § 1, 49 Stat. 543; Sept. 18, 1940, c. 722, Title I, § 7, 54 Stat. 905."

These are words of adequate amplitude to authorize a divestiture order. *U.S. v. E. I. duPont de Nemours and Company*, Sup. Ct. of U.S., Oct. Term 1960 No. 55, May 22, 1961; *F.T.C. v. Mandel Bros.*, 359 U.S. 385, 392-393; *American Power Co. v. S.E.C.*; 329 U.S. 90, 106, 112-113, 118; *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177, 193-194. Indeed, when the I. C. C. has found that an offender has unlawfully acquired control of a carrier and continues to hold the acquisition, an order of divestiture has a fitness so perfect that the order not merely is obviously a suitable exercise of discretion, but needs no gloss.

The point just made also answers complainants' contention that the I. C. C. order of June 9, 1959 is defective because it is not buttressed by a preceding finding specifically setting forth the considerations which, after careful weighing, led the I. C. C. to command the disgorging. When the wrong consists in yielding to an appetite for unlawful acquisition, no tribunal is called on to write an essay on why it has given greater weight to the public

demand that the wrongdoer immediately discharge himself, than the private demand of the wrongdoer that he be allowed, absolutely or conditionally, to keep what he has swallowed. As the cases cited above show, the law is full of examples of similar complete remedies instantaneously imposed on prohibited acquisitions, no matter how much time has elapsed since the forbidden event, no matter how embarrassing the requirement of prompt action in an unfavorable market. See *U.S. v. duPont*, above.

[fol. 335] The final issue is whether the I. C. C. having found, upon investigation, that Kenneth had violated § 5(7) of the Act by acquiring and continuing control of Gilbertville Co., the I. C. C. acted without statutory authority in using that finding as a basis for denying the application of Gilbertville Co. and Nelson Co. that, by merger, the former transfer its assets to the latter. Here the I. C. C. did no more than to refuse lawful unification to companies which it had found had precipitately and perilously effectuated a prohibited union without permission. Under some imaginable circumstances, to have granted the merger application might conceivably be in the public interest. But to deny the application to formalize and strengthen a relationship already in part achieved by unlawful conduct is a clearly proper exercise of a delegated discretionary authority.

Inasmuch as the objections raised to the I. C. C. order of June 9, 1959, are all without merit, it follows that there can be no valid objection to the I. C. C. order of February 15, 1960 which merely reinstated it, nor to the I. C. C. order of July 5, 1960 which merely refused to allow Nelson Co. to escape the effect of the June 9, 1959 order by cancelling all its outstanding certificates of convenience and necessity.

Complaint dismissed with prejudice and costs.

[fol. 336]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
Civil Action No. 60-562-S

GILBERTVILLE TRUCKING Co., INC. et al.,

v.

THE UNITED STATES OF AMERICA, Defendant,

and

INTERSTATE COMMERCE COMMISSION, Intervening Defendant.

JUDGMENT—July 18, 1961

Woodbury, Ch.C.J., Sweeney, Ch.D.J., Wyzanski, D.J.

After hearing and in accordance with the opinion of the Court, it is

Ordered action dismissed with prejudice and with costs.

Peter Woodbury, Chief Circuit Judge; George C. Sweeney, Chief District Judge; Charles E. Wyzanski, Jr., District Judge.

Judgment entered July 18, 1961

[fol. 337]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed September 11, 1961

I. Notice is hereby given that the plaintiffs above-named hereby appeal, and each of them hereby appeals, to the Supreme Court of the United States from the final

judgment entered herein July 18, 1961 dismissing the above-entitled proceeding.

This appeal is taken pursuant to 28 U.S.C. §1253.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

- A. All pleadings, including
 - 1. Verified Complaint (including appendices),
 - 2. Motion of the Interstate Commerce Commission for Leave to Intervene as a Party Defendant,
 - 3. Joint Answer;
- [fol. 338]
- B. All briefs, including
 - 1. Brief for Plaintiffs,
 - 2. Brief for Defendants,
 - 3. Reply Brief for Plaintiffs;
- C. Transcript of the Hearing on May 10, 1961;
- D. All evidence and exhibits introduced in said case, at said Hearing;
- E. Opinion of the Court dated July 7, 1961;
- F. Judgment entered July 18, 1961;
- G. This Notice of Appeal;
- H. Copy of all Docket Entries.

III. The questions presented by this appeal are whether the District Court erred in any or all of the following respects:

- A. In refusing to set aside and enjoin the enforcement of Orders of the Interstate Commerce Commission which
 - 1. Directed that certain of the plaintiffs divest themselves of a carrier

- a. Without having made the ultimate finding, required by §5(7) of the Interstate Commerce Act, that such action is "necessary . . . to prevent continuance of such violation";
 - b. Without having made any basic findings which could support such an ultimate finding or justify such a direction; and
 - c. Without any substantial evidence which could support such basic findings or such an ultimate finding or justify such a direction.
2. Determined that plaintiffs had violated §5(4) of the Interstate Commerce Act
- a. Without having made basic findings sufficient to support such a determination; and
 - b. Without any substantial evidence which could support either the basic findings which were made or sufficient basic findings or which could support such a determination.
3. Denied the application for authority pursuant to §5(2) of the Interstate Commerce Act for plaintiff The L. Nelson & Sons Transportation Company to acquire the stock of plaintiff Gilbertville Trucking Co., Inc.

[fol. 339]

- a. Without having made basic findings sufficient to support such a denial;
- b. Disregarding the evidence comprised by the Examiner's observation of the plaintiffs and the Examiner's conclusions based upon said evidence;
- c. Without any substantial evidence which could support either the basic findings which were made or sufficient basic findings or which could support such a denial; and
- d. On the basis of "unfitness" unwarrantedly assumed because of an alleged violation of §5(4) of the Interstate Commerce Act, which

violation was based solely upon the conclusive presumptions of §§5(5) and 5(6) of the Act.

4. Were entered in flagrant disregard of §8(b) of the Administrative Procedure Act in that they were supported only by a series of statements
 - a. Some of which, as the District Court expressly found, "are trivial to the point of demonstrable irrelevance";
 - b. Some of which were unsupported by substantial evidence;
 - c. Which do not make clear the basis upon which the Commission acted; and
 - d. Which, as a matter of law, do not support either the conclusions reached or the action taken.

B. By implicitly holding that plaintiffs, who were respondents in an investigation proceeding pursuant to §5(7) of the Interstate Commerce Act, had the burden of proof before the Commission with respect to certain facts which were crucial to and determinative of that proceeding.

C. By exceeding its proper role in this proceeding for judicial review of action of the Interstate Commerce Commission,

1. By making its own, de novo findings of fact, which findings were
 - a. In addition to the findings made by the Commission and supplemental to the inadequate findings of the Commission;
 - b. In some respects contrary to express findings made by the Commission;
 - c. Unsupported by and/or contrary to the evidence.

[fol. 340]

2. By refusing, after finding that some of the findings relied upon by the Commission were "trivial

to the point of demonstrable irrelevance", to remand the case to the Commission for determination by the Commission without considering such demonstrably irrelevant findings.

3. By independently adjudging the case as "an unprejudiced, sophisticated mind" rather than reviewing the action taken by the Commission.

Foley, Hoag & Eliot, Henry E. Foley, Attorneys
for Plaintiffs, 10 Post Office Square, Boston 9,
Massachusetts.

PROOF OF SERVICE (omitted in printing).

[fol. 343]

**EXHIBIT "A" TO DISTRICT COURT PROCEEDINGS
CONSISTING OF PROCEEDINGS BEFORE THE
INTERSTATE COMMERCE COMMISSION**

Before the Interstate Commerce Commission

APPLICATION FOR AUTHORITY UNDER SECTION 5, INTERSTATE
COMMERCE ACT, TO CONSOLIDATE, MERGE, PURCHASE, OR
LEASE OPERATING RIGHTS AND PROPERTIES, OR ANY PART
THEREOF, OF A MOTOR CARRIER

(Read Instructions on page 13 before preparing)

DOCKET No. MC-F 6099

(Do not fill in)

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.

APPLICANTS REPRESENT:

I. That this is an application of—

A The L. Nelson & Sons Transportation Company
(State full name and address of transferee¹)

Corporation

(State whether corporation, partnership, individual,
trustee, receiver, or assignee)

¹ Includes, (1) in a consolidation, the new corporation succeeding to assets and assuming liabilities of two or more carriers, (2) in a merger, the surviving corporation performing a similar function, (3) in a purchase, the vendee, and (4) in a lease, the lessee. If more than one transferee, use identification AA, AAA, etc.

doing business as Same

25 West Road (Mailing address: Box 181)
(Rockville, Connecticut)
(Number and street)

Ellington, Connecticut ; and
(City) (State)

B Gilbertville Trucking Co., Inc.
(State full and correct name of transferor²)

Corporation

(State whether corporation, partnership, individual,
trustee, receiver, or assignee)

doing business as Same

Hardwick Road
(Number and street)

Gilbertville, Massachusetts
(City) (State)

for authority under section 5, Interstate Commerce
Act (describe briefly the consolidation, merger,
purchase, or lease for which authority is sought)

Merger of the operating rights and properties of
transferee and transferor.

[fol. 344]

II. That transferee is controlled,³ directly or indirectly,
by the person or persons named below, and each
such person hereby joins in this application as
applicant for authority to control the operating
rights and any property sought to be acquired by
transferee, through the proposed transaction:

² Includes, in a consolidation or merger, the carrier or carriers
proposed to be liquidated, and in a purchase or lease, the vendor
or lessor, respectively. If more than one transfer, use identification
BB, BBB, etc.

³ Section 1 (3) (b), Interstate Commerce Act, provides: "For
the purposes of section 5 * * *, where reference is made to control
(in referring to a relationship between any person or persons and
another person or persons such reference shall be construed to
include actual as well as legal control, whether maintained or
exercised through or by reason of the method of or circumstances
surrounding organization or operation, through or by common
directors, officers, or stockholders, a voting trust or trusts, a holding
or investment company or companies, or through or by any other
direct or indirect means; and to include the power to exercise
control."

Name

Charles G. Chilberg,

Street Address, City, and State

33 Reed Street, Rockville, Connecticut

Name

Clifford J. O. Nelson,

Street Address, City, and State

5 Old Farm Road, Dover, Massachusetts

III. That the number of motor vehicles owned, leased, controlled, or normally operated by applicants and their affiliates, if any, during the 6-month period immediately preceding the filing of this application was:

	Transferee	Transferee's affiliate(s)	Transferor	Transferor's affiliate(s)
Busses				
Trucks	11		4	
Tractors	51		8	
Semitrailers	74		8	
Full trailers				
Pole trailers				
Other				
TOTAL	136		20	

* Section 5 (6) of the act, provides: "For the purposes of this section a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or any other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier."

* In computing the number of motor vehicles of a person involved in unifications under the provisions of section 5 of the act, the combination of a tractor and a semitrailer shall be deemed a single motor vehicle and any one tractor may be paired with any one semitrailer as a single motor vehicle but any tractor or any semitrailer in excess of those so paired shall be computed as one motor vehicle, 49 C. F. R. 180.3.

IV. That there are set forth in exhibits attached hereto and made a part hereof, the following:

EXHIBIT A.—Information respecting transferee, its affiliates if any, and the person or persons controlling transferee;

EXHIBIT B.—Information respecting transferor;

EXHIBIT C.—Nature of the proposed transaction and terms and conditions thereof; and

EXHIBIT D.—Facts and circumstances which applicants rely upon to warrant approval of the proposed transaction; and applicants will submit such additional information as the Commission may require.

V. That the person to whom correspondence with respect to this application shall be addressed is as follows:

Mary E. Kelley

(State full and correct name)

Attorney

(State title and name of company; if attorney, so state)

84 State Street, Boston, Massachusetts

(State business address of person to be addressed)

[fol. 345] WHEREFORE, Applicants pray that the Interstate Commerce Commission enter an order approving and authorizing such transaction, upon the terms and conditions, and with such modifications as it shall find to be just and reasonable; or, if it is found that the transaction is not one subject to section 5, but that it involves the transfer of a certificate or permit properly for consideration under the provisions of section 212 (b), that it be accepted and determined under those provisions and the rules and regulations promulgated thereunder.

Subscribed and sworn to this 27th day of August, 1955.

THE L. NELSON & SONS TRANSPORTATION COMPANY
(Signature of transferee)

By /s/ CHARLES G. CHILBERG

Pres. & Treas.

(Title)

By person(s) in control of transferee:

/s/ CHARLES G. CHILBERG

/s/ CLIFFORD J. O. NELSON

GILBERTVILLE TRUCKING CO., INC.

(Signature of transferor)

By /s/ KENNETH NELSON

Pres. & Treas.

(Title)

[fol. 346]

OATH

STATE OF MASSACHUSETTS }

COUNTY OF SUFFOLK }

ss.:

On the 27th day of August, 1955, before me came

Charles G. Chilberg,

President and Treasurer of Transferee

(Transferee)

Charles G. Chilberg and Clifford J. O. Nelson

(Person or persons in control of Transferee)

and

Kenneth Nelson, President and Treasurer of Transferor

(Transferor)

to me known, who, being by me duly sworn, stated that they executed the foregoing application as transferee, the person or persons controlling transferee, and transferor, or in behalf of said parties, and, if the latter, that they were authorized so to do, that the facts stated therein, as same pertain to each of said parties, respectively, are true and correct to the best of their knowledge, information, and belief.

/s/ MARY KELLEY FLYNN

Notary Public.

[SEAL]

My commission expires 12/8/58

[fol. 347]

EXHIBIT A TO APPLICATION

INFORMATION RESPECTING TRANSFEREE, ITS AFFILIATES, IF ANY, AND THE PERSON OR PERSONS CONTROLLING TRANSFEREE

Full and complete information requested below *must* be furnished. If more than one transferee, attach additional exhibits, and mark for identification; AA, AAA, etc.

1. Date and State of incorporation, formation, or organization of transferee, whichever applicable:

Date December 30, 1947 State Connecticut

2. Name, title, and business address of officers; partners, including limited or silent partners; or trustees; whichever applicable:

Name	Title
Charles G. Chilberg, President & Treasurer	
Street Address, City, and State	
33 Reed St., Rockville, Conn.	

Name	Title
Clifford J. O. Nelson, Secretary & Asst. Treas.	
Street Address, City, and State	
5 Old Farm Road, Dover, Mass.	

Name	Title
Greta C. Carlson, Vice President	
Street Address, City, and State	
25 West Road, Rockville, Conn.	

3. Name and business address of directors:

Name
Charles G. Chilberg
Street Address, City, and State
33 Reed Street, Rockville, Connecticut

Name
Clifford J. O. Nelson
Street Address, City, and State
5 Old Farm Road, Dover, Massachusetts

Name
Greta C. Carlson
Street Address, City, and State
25 West Road, Rockville, Connecticut

4. Name and business address of 10 principal stockholders, shareholders, or other owners, whichever applicable, as of May 31, 1955 (last record date) and their respective holdings. If holdings are in names of nominees, state names of real owners.

Name	Street Address, City, and State
Charles G. Chibberg	33 Reed St., Rockville, Conn.

Extent of Interest		
Class	Shares	%
Common	226	45.75

Name	Street Address, City, and State
Clifford J. O. Nelson	5 Old Farm Road, Dover, Mass.

Extent of Interest		
Class	Shares	%
Common	226	45.75

- [fol. 348] 5. If a person controlling transferee is a corporation, partnership, or association, furnish with respect to such person the information requested in 1, 2, 3, and 4 above. Not applicable.

6. (a) Is transferee a motor, rail, or water carrier, an express or sleeping-car company, a freight forwarder, or a person in control of or affiliated with such a carrier, company, or forwarder? Yes

(Answer yes or no)

- (b) Is any person controlling transferee a motor, rail, or water carrier, an express or sleeping-car company, or a freight forwarder, or controlled by or affiliated with such a carrier, company, or forwarder? Yes

(Answer yes or no)

- (c) Are any of the persons mentioned in 2, 3, 4, or 5 above, other than the persons controlling transferee, a motor, rail, or water carrier, an express or sleeping-car company, or a freight forwarder, or controlled by, in control of, or affiliated with such a carrier, company, or forwarder, other than transferee? No

(Answer yes or no)

- (d) Does transferee, any person controlling transferee, or any other above-mentioned person own any interest, direct or indirect, in, or exercise any measure

of control over any such carrier, company, or forwarder, except as disclosed herein? No

(Answer yes or no)

If answer to any of the above is "yes," explain fully, identifying each carrier, company, or forwarder; describe nature, extent, and scope of its operations, and identify Interstate Commerce Commission authority, if any, under which operations are conducted

Transferee is a motor carrier authorized to conduct interstate operations under Certificate No. MC-42871 and subs.

Mr. Chilberg and Mr. Nelson, who control transferee through stock ownership control the operations of R. A. Byrnes, Incorporated, holders of Certificate No. MC-60186, under temporary authority granted by the Commission by orders dated August 4, 1954 and January 11, 1955 in Docket No. MC-F-5749.

(See attached copies of certificate No. MC-42871 and Subs and Certificate No. MC-60186.)

[fol. 349] 7. Is transferee or any person controlling transferee, engaged, directly or indirectly, in any other form of transportation or activity connected with transportation? No If answer is "yes," indicate the nature, extent, and scope thereof

(Answer yes or no)

The exhibits requested below, identified as indicated, must be furnished respecting transferee and the person or persons controlling transferee, except that, if the latter are noncarrier individuals who do not own any voting stock in, or control any other carrier subject to the Interstate Commerce Act, the exhibits requested respecting transferee only need be furnished. If data are not available or are inapplicable, so state.

Attach to original only: (If documents here specified have been previously filed with the Interstate Commerce Commission in connection with any application, it will be

sufficient to make reference to the docket number under which filed: *Provided*, That any change or changes occurring since such filing shall be shown in separate statement attached hereto and identified to correspond with the specific exhibit herein requested.)

A-1. Authenticated copy of articles of incorporation and by-laws, with all amendments; or authenticated copy of articles of partnership, association, trust agreement, or other documents evidencing organization, whichever applicable. See Docket No. MC-F-4629.

A-2. Authenticated copy of annual report to stockholders or shareholders for year preceding date of filing this application. No such report prepared.

Attach to *original and each copy*:

A-3. Copy of all resolutions of directors authorizing the transaction proposed, authenticated by proper executive officer; and, if the charter or by-laws require approval by the stockholders, copy of resolutions of stockholders authorizing the transaction proposed, and indicating the percentage of stock voting for such authorization.

A-4. Copies of all resolutions of stockholders or directors, or duly authorized committee thereof, authenticated by proper executive officer, designating by name and for that purpose the executive officer by whom the application is signed, verified, and filed.

If transferee or a person controlling transferee is an organization other than a corporation, furnish documentary evidence showing authorization and designation of the individual signing, verifying, and filing the application.

If the party by whom the application is signed, verified, and filed is a trustee, receiver, or like representative, furnish a certified copy of the order of the court, if any, having jurisdiction, authorizing the contemplated action.

A-5. Balance sheet statement as of the latest available date.

A-6. Analysis of intangible property accounts including for each item date of acquisition, source of authority, account in which presently recorded, amounts thereof, reserve, and policy and practice followed with respect to amortization of intangible property.

A-7. Income statement for current calendar year to the latest available date and for each of the two preceding calendar years.

[fol. 350]

EXHIBIT "A" TO EXHIBIT "A"

**CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY**

NO. MC 60186

**R. A. BYRNES, INCORPORATED,
MULLICA HILL, NEW JERSEY**

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D.C., on the 1st day of April, A. D. 1941.

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or

may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

IRREGULAR ROUTES:

General commodities, except explosives, poles, canned foods, and commodities used in canning for processing food,

From points and places in New Jersey to Philadelphia, Pa., and points and places within 25 miles of Philadelphia.

From New York, N. Y., and points and places in New Jersey to points and places in Delaware north of U. S. Highway 40, those in Maryland east of U. S. Highway 1 and north of U. S. Highway 50, and to the District of Columbia and points and places in Maryland and Virginia within 25 miles of the District of Columbia.

Return, with no transportation for compensation except as otherwise authorized, to the above-specified origin points.

Between New York, N. Y., on the one hand, and on the other, Philadelphia, Pa., and points and places in Pennsylvania within 25 miles of Philadelphia, and points and places in New Jersey.

Fertilizer,

From Baltimore, Md., and Philadelphia, Pa., to points and places in New Jersey.

[fol. 351] **OIL,** in containers

From Claymont, Del., to Camden, N. J.

Produce, except such as is used in canning or processing food.

From points and places in Gloucester, Salem, and Cumberland Counties, N. J., to the District of Colum-

bia, points and places in Pennsylvania east of U. S. Highway 19, and those in New York on and east of U. S. Highways 9W and 32, and South of New York Highway 7.

Return, with no transportation for compensation except as otherwise authorized, to the above-specified origin points.

AND IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

W. P. BARTEL
Secretary.

(SEAL)

[fol. 352]

EXHIBIT A

PERMIT

NO. MC 93421

R. A. BYRNES, INCORPORATED,
MULLICA HILL, NEW JERSEY

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 25th day of April, A. D. 1941.

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby granted this Permit as evidence of the authority

of the holder to engage in transportation in interstate or foreign commerce as a contract carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

IRREGULAR ROUTES:

Commodities used in canning or processing food,

From New York, N.Y., Philadelphia, Pa., and Baltimore, Md., to Swedesboro, N. J., with no transportation for compensation on return, except as otherwise authorized.

Canned Goods,

From Swedesboro, N. J., to points and places in Massachusetts, Rhode Island, Connecticut, Delaware, Maryland, and the District of Columbia, those in Pennsylvania east of U. S. Highway 220, those in New York on, south, and east of a line beginning at the Vermont-New York State line, and extending along New York Highway 7, to Junction New York Highway 32, thence along New York Highway 32 to Albany, N. Y., thence along U. S. Highway 9W to Kingston, N.Y., and thence along U. S. Highway 209 to the New York-New Jersey State line, and those in Virginia within 25 miles of the District of Columbia; and

Returned or rejected shipments of canned goods,

From the above-specified destination points to Swedesboro.

AND IT IS FURTHER ORDERED, That this permit shall be effective from the date hereof and shall remain in effect until suspended, changed, or revoked as provided in the said Act.

By the Commission, division 5.

W. P. BARTEL,
Secretary.

(SEAL)

EXHIBIT "A" TO EXHIBIT "A"

CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY

NO. MC 42871 Sub 3*

THE L. NELSON & SONS TRANSPORTATION
COMPANY, A CORPORATION,
ELLINGTON, CONNECTICUT

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 27th day of April, A. D. 1955

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, that the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

IRREGULAR ROUTES:

Materials used in the manufacture of cloth, waste materials resulting from the manufacture of cloth, and supplies and materials used in connection with the transportation or processing of these commodities,

* Certificate No. MC 42871 is revoked as herein above ordered.

when moving to or from places of processing, except liquid commodities, in bulk, in tank vehicles,

Between Hudson, North Chelmsford, Norton, Lowell, Lawrence, and Marlboro, Mass., on the one hand, and, on the other, Manchester, Concord, and Somersworth, N. H., and points in Providence and Bristol Counties, R. I.

Between Providence, Woonsocket, and Pawtucket, R. I., and Hartford, Hazardville and Somersville, Conn., and points in that part of Massachusetts east of the Connecticut River, on the one hand, and, on the other, New York, N. Y., Jersey City, Passaic, Newark, and Camden, N. J., Philadelphia, Pa., and points in Pennsylvania within 30 miles of Philadelphia.

[fol. 354] Between Hazardville, Conn., on the one hand, and, on the other, Millbury and East Douglas, Mass.

From Philadelphia, Pa., and Camden, N. J., to points in those parts of Tolland and Hartford Counties, Conn., on and north of U. S. Highway 6, and

Empty containers used in transporting the commodities named above,

From points in those parts of Tolland and Hartford Counties, Conn., on and north of U. S. Highway 6, to Philadelphia, Pa., and Camden, N. J.

IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

AND IT IS FURTHER ORDERED, That Certificate No. MC 42871, issued February 21, 1951, be, and it is hereby, revoked.

By the Commission, division 5.

HAROLD D. McCOY,
Secretary.

(SEAL)

[fol. 355]

EXHIBITS A-3 AND A-4 TO EXHIBIT "A"

**CERTIFIED COPY OF VOTE OF BOARD OF
DIRECTORS OF THE L. NELSON & SONS
TRANSPORTATION COMPANY.**

I, Clifford J. O. Nelson, Secretary of The L. Nelson & Sons Transportation Company, a corporation duly authorized and existing under the laws of the State of Connecticut, hereby certify that at a special meeting of the Board of Directors of said corporation duly called for the purpose and held at the office of the corporation in Ellington, Connecticut, on the 18th day of August, 1955, all of the Directors being present and voting, the following vote was unanimously adopted:

"VOTED: That Charles G. Chilberg, President and Treasurer of this Corporation be and he is hereby authorized and directed to execute in the corporation's name and seal with its seal an agreement whereby this corporation agrees to purchase 100 shares of the common stock of Gilbertville Trucking Co., Inc. of Gilbertville, Massachusetts, being all of the issued and outstanding stock of said corporation, and for the merger of the operating rights and property of Gilbertville Trucking Co., Inc. with those of this corporation for the consideration and under the terms and conditions set forth in said agreement which was presented and read to the meeting; and to execute all applications and to take all action convenient or necessary to obtain requisite approval of the Interstate Commerce Commission to the proposed transaction."

A true copy.

Attest.

/s/ CLIFFORD J. O. NELSON
Clifford J. O. Nelson,
Secretary

THE L. NELSON
BALANCE

Current Assets:

Cash		2,521.00	
Accounts Receivable		117,247.00	
Receivables from Employees, etc.		7,672.49	
Tires and Tubes on Hand	10,839.10		
Unused Materials, Parts	8,739.22	1,578.32	
Six Shares - L. Nelson Stock		600.00	\$147,625.72

Deferred Charges to Income:

Prepaid Stationery & Printed Matter		1,890.57	
Prepaid interest		7,691.14	
Prepaid Rent - New York Terminal		2,100.00	
Prepaid Vacation Payroll		1,885.20	
Eldridge Franchise (MC-F-4629)	5,560.61		
Res. for Amortization	5,560.61	--	

Organization - Legal Fees	591.37		
Reserve for Amortization	591.37	--	13,566.91

Fixed Assets:

Revenue Equip., trucks, etc.	456,260.75		
Res. for Depreciation	213,931.35	242,329.40	
Service and Passenger cars	26,039.49		
Res. for Depreciation	16,920.00	9,119.49	
Shop and Garage Equipment	4,727.76		
Reserve for Depreciation	2,850.11	1,877.65	
Furniture & Office Equip.	11,689.24		
Res. for Depreciation	4,667.64	7,021.60	
Hoist & Fork Lift Truck	13,795.25		
Reserve for Depreciation	6,751.61	7,043.64	267,391.78

TOTAL ASSETS

\$428,584.41

Fixed Assets:

Revenue Equip., trucks, etc.	456,260.75		
Res. for Depreciation	<u>213,931.35</u>	242,329.40	
Service and Passenger cars	26,039.49		
Res. for Depreciation	<u>16,920.00</u>	<u>9,119.49</u>	
Shop and Garage Equipment	4,727.76		
Reserve for Depreciation	<u>2,850.11</u>	1,877.65	
Furniture & Office Equip.	11,689.24		
Res. for Depreciation	<u>4,667.64</u>	7,021.60	
Hoist & Fork Lift Truck	13,795.25		
Reserve for Depreciation	<u>6,751.61</u>	<u>7,043.64</u>	<u>267,391.78</u>
TOTAL ASSETS			<u>\$428,584.41</u>

LIABILITIES

Current Liabilities:

Accounts Payable	85,487.04		
Employee Taxes Withheld	9,220.38		
Res. for Fed. Freight Tax	5,455.53		
Accrued Wages to May 31, 1955	3,502.52		
Accrued Payroll Taxes to May 31/55	3,952.42		
Due to the Bergeon Company	4,744.48		
Res. for Cargo Loss & Damage	3,370.64		
Res. for Fed. & State Corp. Tax	<u>13,414.98</u>	129,147.99	

Long Term Loans & Notes Payable:

Notes Payable - Equipment	138,008.19		
Notes Payable - Officers	<u>9,691.08</u>	<u>147,699.27</u>	276,847.26

CAPITAL

Capital Stock Outstanding		50,000.00	
Unearned (Paid In) Surplus		837.38	
Earned Surplus - Jan. 1, 1955	79,114.23		
Net Profit-5 months ended 5/31/55	<u>21,785.54</u>	<u>100,899.77</u>	

Net Worth		<u>151,737.15</u>	
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TOTAL LIABILITIES & CAPITAL			<u>\$428,584.41</u>
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[fol. 356]

EXHIBIT A-5 TO EXHIBIT "A"

THE L. NELSON AND SONS TRANSPORTATION COMPANY
OPERATING STATEMENT
FROM JANUARY 1, 1955 TO MAY 31, 1955

[fol. 357]

145

EXHIBIT A-7(1) TO EXHIBIT "A"

Revenues:

Operating Freight Revenues

\$490,727.33

Operation & Maintenance Expenses:

Equipment Maintenance

\$70,733.94

Transportation

141,073.46

Terminal

108,560.25

Traffic

5,221.68

Insurance & Safety

25,935.35

Administrative & General

40,444.71

Total Operation & Maintenance Expense 391,969.39

• Other Expenses:

Depreciation Expense

32,025.03

Depreciation Adjustment (Gain)

(2,328.96)

Operating Taxes & Licenses

30,229.64

Total Expenses

59,925.71 451,895.10

Net Operating Revenue

38,832.23

Other Deductions:

3,631.71

Net Income before Income Taxes

35,200.52

Income Taxes

13,414.98

NET INCOME

\$21,785.54

THE L. NELSON AND SONS TRANSPORTATION COMPANY
 OPERATING STATEMENT
FROM JANUARY 1, 1954 to DECEMBER 31, 1954

REVENUE:

Operating Freight Revenues \$889,420.00

OPERATION & MAINTENANCE EXPENSES:

Equipment maintenance	\$136,109.00
Transportation	288,667.00
Terminal	225,207.00
Traffic	8,541.00
Insurance & Safety	56,069.00
Admin. & General	<u>53,981.00</u>

Total Operation & Mainten. Expenses \$768,374.00

OTHER EXPENSES:

Depreciation Expense	68,286.00
Depreciation Adjustment	(8,997.00)
Operating Taxes & Licenses	<u>53,551.00</u>

Total Expenses

112,840.00

881,214.00

NET OPERATING REVENUE

8,206.00

OTHER DEDUCTIONS:

5,394.00

NET INCOME BEFORE INCOME TAXES

2,812.00

Income Taxes

175.00

NET INCOME

\$ 2,637.00

[60.358] EXHIBIT A-1(2) TO EXHIBIT "A"

THE L. NELSON & SONS TRANSPORTATION COMPANY
INCOME STATEMENT
JANUARY 1, 1953 to DECEMBER 31, 1953

150
[Vol. 359] EXHIBIT A-7(3) TO EXHIBIT "A"

REVENUES:

Operating Revenues \$895,774

EXPENSES:

Operating & Maintenance Expense \$766,729
Depreciation Expense 48,041
Depreciation Adjustment (Credit) (2,701)
Operating Taxes & Licenses 54,169

Total Expenses 866,238

Net Operating Revenue 29,536

DEDUCTIONS FROM ORDINARY INCOME:

Interest 1,626
Other Deductions 232 1,858

Net Income before Income Taxes 27,678

Provision for Income Taxes, Fed. & State 7,696

Net Income transferred to Earned Surplus
for twelve months ending December 31, 1953. \$19,982

[fol. 360]

EXHIBIT B TO APPLICATION

INFORMATION RESPECTING TRANSFEROR

Full and complete information requested below *must* be furnished. If more than one transferor, attach additional exhibits, and mark for identification BB, BBB, etc.

1. Date and State of incorporation, formation, or organization of transferor, whichever applicable: Date June 26, 1940 State Massachusetts.

2. Is there any financial or other relationship, direct, or indirect, existing between transferor and other applicants? Yes. If answer is "yes," explain: Mr.
 (Answer yes or no)

Chilberg and Mr. Nelson the controlling stockholders of Transferee are brothers of Mr. Kenneth Nelson the controlling stockholder of transferor. They each are stockholders of the Bergson Company, a real estate holding company.

3. (a) Describe briefly the motor-carrier operating rights of transferor for which authority to consolidate, merge, purchase, or lease is sought, furnishing number or numbers assigned thereto by the Interstate Commerce Commission: See copy of operating authority contained in Certificate No. MC-87431 and Subs thereunder attached hereto.

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- (b) If only part of transferor's operating authority is involved in the proposed transaction, so state and describe in similar manner operating authority be-

ing retained: All of transferor's operating rights and property are involved in this transaction.

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- (c) If the transaction involves other properties of transferor, so state and generally describe the properties: All of the motor carrier property of transferor including motor vehicles, office furniture and fixtures, garage equipment, miscellaneous parts, etc. are included in this transaction.

[fol. 361]

4. Are operations being conducted by transferor under the operating rights involved in the proposed transaction? Yes. If answer is "no," explain:

(Answer yes or no.)

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The exhibits requested below, identified as indicated, must be furnished respecting transferor. If data requested are not available or are inapplicable, so state.

Attach to *original* only: (If documents here specified have been previously filed with the Interstate Commerce Commission in connection with any application, it will be sufficient to make reference to the docket number under which filed: *Provided*, That any change or changes occurring since such filing shall be shown in separate statement attached hereto and identified to correspond with the specific exhibit herein requested.)

- B-1. If transferor operates as a common carrier in interstate or foreign commerce solely within a single State, under the partial exemption of the second proviso of section 206 (a), Interstate Commerce Act, attach certified copy of State operating authority. Not applicable.

Attach to *original* and *each copy*:

B-2. Copy of all resolutions of directors authorizing the transaction proposed, authenticated by proper executive officer; and, if the charter or by-laws require approval by the stockholders, copies of resolutions of stockholders authorizing the transaction proposed, and indicating the percentage of stock voting for such authorization.

B-3. Copies of all resolutions of stockholders or directors, or duly authorized committee thereof, authenticated by proper executive officer, designating by name and for that purpose the executive officer by whom the application is signed, verified, and filed.

If transferor is an organization other than a corporation, furnish documentary evidence showing authorization and designation of the individual signing, verifying, and filing the application.

If the party by whom the application is signed, verified, and filed is a trustee, receiver, or like representative of transferor, furnish a certified copy of the order of the court, if any, having jurisdiction, authorizing the contemplated action.

B-4. Balance sheet statement as of the latest available date.

B-5. Analysis of intangible property accounts including for each item date of acquisition, source of authority, account in which presently recorded, amounts thereof, reserve, and policy and practice followed with respect to amortization of intangible property.

B-6. Income statement for current calendar year to the latest available date and for each of the two preceding calendar years.

B-7. Abstract showing actual shipments transported during the 6 months preceding the filing of the application (date, origin point, destination point, and commodity), under the operating authority involved in the proposed transaction. Indicate whether all shipments or only representative shipments are included, and, if traffic was interchanged, specify the point at which such interchange was effected.

[fol. 362]

EXHIBIT B TO EXHIBIT "B"

**CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY**

NO. MC 87431*

**GILBERTVILLE TRUCKING CO., INC.,
GILBERTVILLE, MASSACHUSETTS**

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 25th day of February, A. D. 1955

AFTER DUE INVESTIGATION: It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding:

IT IS ORDERED. That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

REGULAR ROUTES:

General commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between Lowell, Mass., and Boston, Mass., serving the intermediate and off-route points listed below, over routes as follows:

From Lowell over U. S. Highway 3 to Boston;

From Lowell over U. S. Highway 3 to Burlington, Mass., thence over unnumbered highway to Woburn, Mass., thence over Massachusetts highway 38 to Boston;

From Lowell over Massachusetts Highway 38 via Wilmington, Mass., to Woburn, Mass., thence over unnumbered highway (old Massachusetts Highway 128) to Stoneham, Mass. (also from Wilmington over Massachusetts Highway 129 to Reading, Mass., thence over Massachusetts Highway 28 to Stoneham), thence over Massachusetts Highway 28 to Boston;

From Lowell over U. S. Highway 3 to Tyngsboro, Mass., thence over unnumbered highway via Collinsville, Mass. to Dracut, Mass., thence over Massachusetts Highway 113 to Methuen, Mass., thence over Massachusetts Highway 28 to Boston;

[fol. 363] From Lowell over Massachusetts Highway 110 to Haverhill, Mass., thence over Massachusetts Highway 125 to Bradford, Mass., thence over unnumbered highway via South Groveland, Mass. to West Boxford, Mass. (also from Bradford over unnumbered highway approximately three miles west of South Groveland to West Boxford),

thence over unnumbered highway to junction, unnumbered highway at a point approximately five miles northwest of Boxford, Mass., thence over unnumbered highway to North Andover, Mass., thence over unnumbered highway to junction Massachusetts Highway 114, thence over Massachusetts Highway 114 to junction Massachusetts Highway 125, thence over Massachusetts Highway 125 to junction Massachusetts Highway 28, thence over Massachusetts Highway 28 to Boston;

From Lowell to junction Massachusetts Highways 114 and 125, as specified above, thence over Massachusetts Highway 114 to junction unnumbered highway, thence over unnumbered highway via North Reading and Lynnfield, Mass. to Wakefield, Mass., thence over Massachusetts Highway 129 to Junction U.S. Highway 1, thence over U. S. Highway 1 to junction unnumbered highway, thence over unnumbered highway via Melrose, Mass. to Malden, Mass., thence over Massachusetts Highway 60 to junction Massachusetts Highway 28, thence over Massachusetts Highway 28 to junction Massachusetts Highway 1-A, thence over Massachusetts Highway 1-A to junction Massachusetts Highway C-1, thence over Massachusetts Highway C-1 to Boston;

From Lowell to Wakefield, Mass., as specified above, thence over unnumbered highway (old Massachusetts Highway 128) to Stoneham, Mass., thence over unnumbered highway to junction Massachusetts Highway 38, thence over Massachusetts Highway 38 to Boston;

From Lowell over Massachusetts Highway 133 to Frye Village, Mass., thence over Massachusetts Highway 28 to Andover, Mass., thence over unnumbered highway to Tewksbury, Mass., thence over Massachusetts Highway 38 to Boston;

From Lowell to Andover, Mass., as specified above, thence over unnumbered highway via Ballard Vale,

Mass. to junction Massachusetts Highway 62, thence over Massachusetts Highway 62 to Wilmington, Mass., thence over Massachusetts Highway 38 to Boston;

From Lowell over Massachusetts Highway 110 via Chelmsford, Mass., to junction unnumbered highway near Westford, Mass., thence over unnumbered highway via Westford and West Chelmsford, Mass. to junction U. S. Highway 3, thence over U. S. Highway 3 to Tyngsboro, Mass. (also from Chelmsford over Massachusetts Highway 4 to North Chelmsford, Mass., thence over U. S. Highway 3 to Tyngsboro), thence as specified above to Boston;

[fol. 364] From Lowell over unnumbered highway via North Billerica, Mass., to junction U. S. Highway 3, thence over U. S. Highway 3 to Billerica, Mass., thence over unnumbered Highway to Bedford Springs, Mass., thence over Massachusetts Highway 4 to Bedford, Mass., thence over Massachusetts Highway 62 to Concord, Mass., thence over Massachusetts Highway 2-A via Lexington, Mass., to Boston; (also from junction Massachusetts Highway 2-A and unnumbered highway approximately three miles west of Lexington over unnumbered highway to Lexington, thence over Massachusetts Highway 2-A to Boston) (also from Concord over Massachusetts Highway 126 to junction Massachusetts Highway 2, thence over Massachusetts Highway 2 to Boston; also from Concord over Massachusetts Highway 126 to junction unnumbered highway at a point approximately three miles southeast of Concord, thence over unnumbered highway via Lincoln, Mass., to Boston; also from Concord over above-specified route to junction unnumbered highway at a point approximately three miles east of Lincoln, Mass., thence over unnumbered highway to junction Massachusetts Highway 117, thence over Massachusetts Highway 117 to junction U. S. Highway 20, thence over U. S. Highway 20 to Boston);

From Lowell to Reading, Mass., as specified above, thence over unnumbered highway to junction another unnumbered highway (old Massachusetts Highway 128), thence over unnumbered highway via Woburn, Mass., to junction Massachusetts Highway 2-A, thence over Massachusetts Highway 2-A to Boston;

From Lowell to Billerica, Mass., as specified above, thence over unnumbered highway via Pattenville, Mass., to junction Massachusetts Highway 38, thence over Massachusetts Highway 38 to junction unnumbered highway at a point approximately six miles north of Wilmington, Mass., thence over unnumbered highway via North Wilmington, Mass., to Andover, Mass., ~~thence~~ over Massachusetts Highway 28 to Boston;

From Lowell to Bedford, Mass., as specified above, thence over Massachusetts Highway 62 to junction Massachusetts Highway 28, thence over Massachusetts Highway 28 to Boston;

From Lowell to Bedford, Mass., as specified above, thence over Massachusetts Highway 25 to junction Massachusetts Highway 2-A, thence over Massachusetts Highway 2-A to Boston;

From Lowell to Billerica, Mass., as specified above, thence over unnumbered highway to junction Massachusetts Highway 38 at a point approximately four miles north of Wilmington, Mass., thence over Massachusetts Highway 38 to Boston;

From Lowell to Boston, as specified above, thence over Massachusetts Highway 138 to junction Massachusetts Highway 135, thence over Massachusetts Highway 135 to junction U. S. Highway 1, thence over U. S. Highway 1 to Boston, thence over unnumbered highway via Needham Heights, Mass., to Needham, Mass., thence over Massachusetts Highway 135 to Wellesley, Mass., thence over Massachusetts Highway 16 via Wellesley Heights

Mass., to Boston (also from Wellesley Heights over Massachusetts Highway 9 to Boston); and

[fol. 265] Return over above-specified routes to Lowell.

Service is authorized to and from the intermediate points of Billerica, Burlington, Woburn, Winchester, Medford, Tewksbury, Wilmington, North Woburn, Reading, Stoneham, Wakefield, Melrose, Malden, Everett, Methuen, Andover, North Andover, Somerville, Charlestown, Cambridge, Brookline, Arlington, Chelmsford, Bedford, Concord, Lexington, Waltham, Watertown, Haverhill, Bradford, and Wellesley, Mass., and the off-route points of Boxford, Groveland, Graniteville, West Haverhill, and Chelsea, Mass.

Sanitary napkins, facial tissues, and paper boxes.

Between New York, N. Y., and Wilmington, Del., serving the intermediate point of Philadelphia, Pa., and the off-route point of Rockland, Del.:

From New York over U. S. Highway 1 to Philadelphia, Pa., thence over U. S. Highway 13 to Wilmington, and return over the same route.

IRREGULAR ROUTES:

General commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading.

Between points in Massachusetts.

Between the Town of Hardwick, Mass., on the one hand, and, on the other, New York, N. Y., and points in New York and New Jersey within 20 miles of New York, N. Y.

Sanitary napkins, facial tissues, and machinery.

From Hardwick, Mass., to Boston, Mass., New York, N. Y., and points in New York and New Jersey within 20 miles of New York, N. Y.

Pickled skins.

From New York, N. Y. to Ipswich and Peabody, Mass.

Pulpboard.

From Boston, Mass., to Hardwick, Mass.

Materials used or useful in the manufacture and sale of sanitary napkins and facial tissues.

From New York, N. Y., and points in New York and New Jersey within 20 miles of New York, N. Y., to Hardwick, Mass.

[fol. 366] *Fertilizer, and fertilizer materials.*

From Portland, Conn., to Hardwick, Mass., and points in Massachusetts within 15 miles of Hardwick.

Lime, and limestone products.

From Adams and Lee, Mass., to Hamden, East Hartford, and Hartford, Conn., Providence and Woonsocket, R. I., New York, N. Y., and points in New Jersey within ten miles of New York, N. Y.

Agricultural commodities.

From Hardwick, Mass., to Merose, Conn., and New York, N. Y.; and

Return with no transportation for compensation except as otherwise authorized, to above-specified origin points.

General commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading.

Between Palmer, Mass., and points in Massachusetts within ten miles of Palmer, on the one hand, and, on the other, points in Connecticut and Rhode Island.

Between Palmer and Monson, Mass., on the one hand; and, on the other, points in Massachusetts within five miles of Palmer and Monson.

Household goods as defined by the Commission.

Between Palmer, Mass., and points in Massachusetts within ten miles of Palmer, on the one hand, and, on the other, points in Vermont.

Household goods.

Between Hardwick, Mass., on the one hand, and, on the other, points in Connecticut, New Jersey, New York, and Rhode Island.

Livestock.

Between Palmer, Mass., and points in Massachusetts within ten miles of Palmer, on the one hand, and, on the other, points in Vermont.

Any repetition in the statement of the authority granted herein shall be construed as conferring only a single operating right.

IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

[fol. 367]. AND IT IS FURTHER ORDERED: That this certificate shall supersede: (1) Certificates Nos. MC 87431 and MC 87431 Sub 7, issued to the above named carrier July 8, 1942 and March 12, 1948, respectively; (2) Certificate No. MC 64627, issued June 2, 1943, acquired by above named carrier pursuant to MC EC 57090 (as corrected), assigned No. MC 87431 Sub 8, and that said certificates be, and they are hereby, canceled.

By the Commission, division 5.

GEORGE W. LAMB,
Secretary.

(SEAL)

* This certificate embraces the operating rights in the certificates superseded and canceled in the last ordering paragraph above.

[fol. 368] EXHIBITS B-2 AND B-3 TO EXHIBIT "B"

**CERTIFIED COPY OF VOTE OF STOCKHOLDERS
AND BOARD OF DIRECTORS OF GILBERTVILLE
TRUCKING CO., INC.**

I, Arthur Paroshinsky, Clerk of Gilbertville Trucking Co., Inc., a corporation duly authorized and existing under the laws of the Commonwealth of Massachusetts, hereby certify that at a special joint meeting of the Stockholders and Board of Directors of Gilbertville Trucking Co., Inc. held at Gilbertville, Massachusetts on the 18 day of August, 1955 all of the said Stockholders and Directors being present and voting, the following vote was unanimously adopted:

"VOTED: That Kenneth Nelson, President and Treasurer of this corporation be and he is hereby authorized and directed to execute a proposed agreement which was presented and read to the meeting providing for the sale of all of the stock of this corporation to The L. Nelson & Sons Transportation Company, and for the merger of all the properties of this company with those of The L. Nelson & Sons Transportation Company; and to do and perform all other matters and things necessary to obtain requisite approval of the Interstate Commerce Commission and other regulatory bodies having jurisdiction and to consummate the transaction in accordance with the terms of said agreement."

A true copy.

Attest:

(S) ARTHUR PAROSHINSKY
Arthur Paroshinsky,
Clerk

GILBERTVILLE TRUCKING CO., INC.

BALANCE SHEET. MAY 31, 1955

ASSETS

Current Assets:

Cash	791.87	
Accounts Receivable	<u>71,868.36</u>	72,660.23

Deferred Charges to Income:

Prepaid interest	1,375.05	
Original Organization Legal Fees	150.00	
Lewis Marmer Franchise	7,500.00	
Reservé for Amortization	<u>1,250.00</u>	<u>6,250.00</u>
		7,775.05

Fixed Assets:

Revenue Equip., trucks, etc.	68,937.31	
Res. for Depreciation	<u>21,301.73</u>	47,635.58

Furniture and Office Equip.	1,969.31	
Res. for Depreciation	<u>76.09</u>	1,893.22

Service Cars	1,222.21	
Res. for Depreciation	<u>432.82</u>	<u>789.39</u>
		50,318.19

I.C.C. rights		<u>1,250.00</u>
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TOTAL ASSETS

\$132,003.47

Furniture and Office Equip.	1,969.31		
Res. for Depreciation	<u>76.09</u>	1,893.22	
Service Cars	1,222.21		
Res. for Depreciation	<u>432.82</u>	<u>789.39</u>	50,318.19
I.C.C. rights			<u>1,250.00</u>
TOTAL ASSETS			<u>\$132,003.47</u>

LIABILITIES

Current Liabilities:

Accounts Payable	\$59,695.84		
Employee Taxes Withheld	3,067.46		
Federal Freight Tax Payable	2,388.57		
Res. for Cargo Loss & Damage	527.25		
Accrued Payroll Taxes	1,095.13		
Reserve for State & Fed. Corp. tax	<u>3,880.15</u>	70,654.40	

Long Term Loans & Notes Payable:

Notes Payable - Equipment	21,683.38		
Notes Payable - Officers	<u>14,037.75</u>	<u>35,721.13</u>	106,375.52

CAPITAL

Capital Stock Outstanding		100.00	
Unearned (Paid in) Surplus		32,366.23	
*Earned Surplus - Deficit	(16,629.85)		
Net Profit for Five Months ended May 31, 1955	<u>9,191.56</u>	<u>(7,438.29)</u>	
Net Worth			<u>25,627.94</u>
TOTAL LIABILITIES & CAPITAL			<u>\$132,003.47</u>

*Deficit \$39,868.34 existed on March 1, 1953, date Capital Stock was acquired by present stockholders.

[fol. 369]

EXHIBIT B-4 TO EXHIBIT "B"

GILBERTVILLE TRUCKING COMPANY, INCORPORATED
OPERATING STATEMENT - JAN. 1, 1955 to MAY 31, 1955.

[fol. 370] EXHIBIT B-6(1) to EXHIBIT "B"

164

REVENUE:

Operating Freight Revenues \$151,746.67

OPERATION & MAINTENANCE EXPENSES:

Equipment Maintenance	\$ 3,931.61
Transportation	89,781.56
Terminal	17,593.79
Traffic	214.08
Insurance & Safety	5,971.58
Administrative and General	<u>6,014.73</u>

Total Operation & Maintenance Exp. 123,507.35

OTHER EXPENSES:

Depreciation Expense	4,849.07
Amort. Chargeable to Operations	625.00
Operating Taxes & Licenses	<u>8,497.20</u>
Total Expenses	<u>13,971.27</u>

13,971.27 137,478.62

Net Operating Revenue 14,268.05

OTHER DEDUCTIONS:

1,553.06

Net Income Before Income Taxes 12,714.99

Income Taxes 3,523.43

NET INCOME \$9,191.56

GILBERTVILLE TRUCKING COMPANY, INCORPORATED
 OPERATING STATEMENT
 JANUARY 1, 1954 to DECEMBER 31, 1954.

REVENUES:

Operating Freight Revenues	\$117,818.79
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OPERATION & MAINTENANCE EXPENSES:

Equipment Maintenance	\$5,084.22
Transportation	58,576.40
Terminal	2,753.31
Insurance & Safety	5,218.96
Adm. & General	<u>34,027.82</u>

Total Operation & Maint. Expenses	\$105,660.78
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OTHER EXPENSES:

Depreciation Expense	8,540.92
Amort. Chargeable to Operations	625.00
Operating Taxes & Licenses	3,722.53

Total Expenses	<u>12,888.45</u>	118,549.23
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NET OPERATING REVENUE	LOSS	(730.44)
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OTHER DEDUCTIONS:

NET INCOME BEFORE INCOME TAXES	LOSS	(1,158.84)
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Income Taxes		<u>1,340.35</u>
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NET INCOME		<u>(\$ 2,499.19)</u>
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[Fol. 371] EXHIBIT B-6(2) TO EXHIBIT "B"

GILBERTVILLE TRUCKING COMPANY, INCORPORATED
OPERATING STATEMENT
JANUARY 1, 1953 to DECEMBER 31, 1953

[fol. 372]

166

EXHIBIT B-6(3) TO EXHIBIT "B"

REVENUE:

Operating Freight Revenues \$75,489.57

OPERATION & MAINTENANCE EXPENSES:

Equipment Maintenance	\$5,968.61
Transportation	26,578.20
Terminal	4,910.63
Insurance & Safety	5,711.39
Administrative & General	<u>4,389.37</u>

Total Operation & Mainten. Expenses \$47,558.20

OTHER EXPENSES:

Depreciation Expense	4,461.83
Depreciation Adjustment	(2,234.68)
Operating Taxes & Licenses	<u>2,229.87</u>

Total Expenses	<u>4,457.02</u>	<u>52,015.22</u>
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Net Operating Revenue	23,474.35
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OTHER DEDUCTIONS:

Net Income Before Income Taxes	634.48
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Income Taxes	<u>2,525.51</u>
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NET INCOME	<u>\$20,314.36</u>
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[fol. 373]

EXHIBIT C TO APPLICATION

NATURE OF PROPOSED TRANSACTION AND
TERMS AND CONDITIONS THEREOF

Attach to original and each copy of this application the following exhibits, identifying as indicated. If data requested are not available, or are inapplicable, so state.

C-1. Copy of every contract or other written instrument or instruments entered into, or proposed to be entered into, pertaining to the transaction, or if not contained in written contract or other instrument, a statement, identified as such, containing detailed description of the transaction.

C-2. Statement showing ledger value (or estimated value where ledger value not available) for property proposed to be acquired, segregated by items in accordance with Uniform System of Accounts for Motor Carriers, with further segregation of revenue automotive equipment on basis of buses, trucks, tractors, semitrailers, full trailers, pole trailers, and miscellaneous equipment.

C-3. Statement containing the following information for each item of property proposed to be acquired, if encumbered, and transferee has agreed to assume obligation in regard thereto:

- (a) Description of the property encumbered.
- (b) Amount of encumbrance and full description thereof, including maturity, interest, other terms and conditions, and whether amount is evidenced by a promissory note.
- (c) Amount of encumbrance to be assumed by transferee.

- C—4. Statement explaining how transferee proposes to meet the financial requirements of the transaction, including, if a loan is involved, the amount, maturity, interest rate, other terms and conditions, and whether a promissory note will be issued.
- C—5. If application is for authority to consolidate, merge, or purchase, "giving effect" balance sheet for transferee as of the latest available date, showing the effect of consummation of the proposed transaction.
- C—6. Statement indicating how transferee proposes to treat additions, if any, to intangible property accounts resulting from consummation of the proposed transaction.
- C—7. "Giving effect" income statement for the current calendar year to date, for transferee, showing estimated adjustments and eliminations which would have resulted from consummation of the proposed transaction.
- C—8. Map showing all operations of applicants and affiliates of transferee, if any, as of date of application, and identifying their respective routes by distinguishing colors. If the operations are such that they cannot be shown on a map feasibly, it may be omitted.

[fol. 374]

EXHIBIT C-1 TO EXHIBIT "C"

AGREEMENT made this 18th day of August, 1955, between Kenneth Nelson of Manchester, Connecticut; Gilbertville Trucking Co., Inc., a corporation duly authorized by law and having a principal place of business at Gilbertville, Massachusetts; and The L. Nelson & Sons Transportation Company, a corporation duly authorized by law and having its principal place of business in Ellington, Connecticut.

WITNESSETH:

WHEREAS, Gilbertville Trucking Co., Inc. (hereinafter called Gilbertville) is engaged in the motor transportation business by virtue of Certificate of Public Convenience and Necessity No. MC 87431 and subs thereunder, issued by the Interstate Commerce Commission; and

WHEREAS, said Gilbertville has outstanding only one class of capital stock of a total amount of 100 shares, common stock, without par value; and

WHEREAS, Kenneth Nelson (hereinafter called Stockholder) is the owner or controls all of said stock of Gilbertville; and

WHEREAS, The L. Nelson & Sons Transportation Company (hereinafter called Nelson) is also engaged in the motor transportation business conducting operations by virtue of Certificate of Public Convenience and Necessity No. 42871 and Subs thereunder, issued by the Interstate Commerce Commission; and

WHEREAS, the parties hereto mutually desire to merge the motor transportation business of Gilbertville and Nelson,

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties hereto, and in further consideration of One dollar (\$1.00) paid by each of the parties to the other, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. On or within 60 days after the effective date of the final order of the Interstate Commerce Commission approving and authorizing this transaction the stockholder shall transfer, assign and deliver to Nelson ~~all~~ of the common stock of Gilbertville, (namely 100 shares), representing all of the issued and outstanding stock of said corporation. As full consideration for said one hundred (100) shares of stock, the stockholder agrees to accept and Nelson agrees to transfer and deliver to the ~~stockholder~~ so many shares of stock of Nelson as may be due him based on the then net book value of Nelson and Gilbertville, respectively, after providing for Federal and State corporation taxes as of the date of consummation, computed in accordance with generally accepted accounting principles. It is recognized and acknowledged by the parties that the net book value of each share of the 500 shares outstanding of Nelson as of May 31, 1955 was \$303.47, whereas the book value of each of the 100 shares of Gilbertville as of said date was \$256.28 per share. Thus if the transaction were consummated as of May 31, 1955 in order for the stockholder to receive equity for the \$25,627.94 net book value of the stock of Gilbertville as contemplated by this agreement, the 100 shares of stock of Gilbertville would be exchanged for 85 shares of Nelson stock, as more fully set forth in the appendix attached hereto.

2. Recognizing that in order to carry out the terms of this agreement it will be necessary to increase the present authorized capital of Nelson (now fixed at 500 shares at \$100 par value per share or \$50,000), Nelson stipulates and agrees as soon as practical after approval of this transaction by the Interstate Commerce Commission and the determination as to the number of shares of its capital stock which may be due the stockholder in exchange for Gilbertville stock to seek authorization from the proper authorities for an increase in its capital stock to carry out the terms of this agreement.

3. The parties hereto agree to cooperate in promptly filing and diligently prosecuting all necessary applications seeking approval and authorization from the Interstate

Commerce Commission and other regulatory bodies having jurisdiction.

4. Each of the parties hereto shall be permitted to make such audits of the books and accountants of either Nelson or Gilbertville as may be necessary or advisable in making a proper computation as to value of the stock of the respective companies.

5. Should the Interstate Commerce Commission issue an order approving and authorizing the transaction here proposed, subject to conditions or limitations which vary or alter the terms or provisions of this agreement, or as a condition of its order of approval require cancellation or elimination of any part or the whole of the Certificate of Public Convenience and Necessity issued to either Nelson or Gilbertville, then and in that event only, the party or parties hereto whose rights are diminished or whose obligations are increased by said order, may terminate this agreement and all of the rights and obligations of the parties hereto shall become null and void. Provided, however, that the party or parties whose rights are diminished or whose obligations are increased thereby shall give to the other party written notice of their intention to elect to have the said agreement become null and void and the reason therefor, said notice to be sent registered mail, postage prepaid, not later than ten (10) days after receipt of the final order of the Interstate Commerce Commission setting forth such conditions or limitations, otherwise, the conditions or limitations contained in such order shall constitute a modification of this agreement, which shall, as modified by the order of the Interstate Commerce Commission, be and remain in full force and effect.

6. Gilbertville hereby consents to the terms and conditions of this agreement and does hereby agree to cooperate in the preparation and filing of the application for merger of the properties of Gilbertville and Nelson.

7. This agreement contains the entire agreement between the parties, and there are no other agreements or understandings between the parties with respect to the subject matter involved in this transaction, and this agreement can-

A. Yes. It was immediately found that it was practically impossible for Gilbertville Trucking Company, Incorporated, to secure any financing arrangements from banks or other financial institutions and the working capital has always been very low.

Exam. Baumgartner: Well, Mr. Solomon, are you telling us now, in answer to that last question, what were your activities in connection with these negotiations?

The Witness: Yes.

Exam. Baumgartner: That is what she is asking you.

The Witness: That's right.

Exam. Baumgartner: What were your activities in connection with these negotiations? Either state what you did—

The Witness: Don't state what I did?

Exam. Baumgartner: I say: state what you did, what did your activities consist of?

The Witness: I advised—early in 1954 I advised Kenneth Nelson that he—

Exam. Baumgartner: Don't tell what you advised him, now. You advised him in response to his request, is that right?

The Witness: No.

Exam. Baumgartner: What?

The Witness: No. It was my request.

Exam. Baumgartner: You requested—

[fol. 89] By Miss Kelley:

Q. You volunteered advice, is that it?

A. That's right, as an accountant. Of course, our credit was precarious.

Mr. Keenan: We have no objection, sir, to learning what advice he gave the management.

Exam. Baumgartner: All right, I will permit the witness to go on. I shouldn't have interjected myself at this point. Go ahead, Mr. Witness.

The Witness: I advised Kenneth Nelson in order to strengthen his financial means of the corporation, since he could not secure any further monies as an individual or—

[fol. 90] Exam. Baumgartner: I think we should get into the record what was the condition of the company from the financial standpoint before you as an expert can express an opinion for the record.

The Witness: Yes.

Exam. Baumgartner: If you expressed an opinion to Kenneth Nelson, that is something else.

The Witness: When Kenneth Nelson purchased the stock on March 1, 1953, the corporation had a deficit of \$39,868.34. The assets, as of December 31, 1953, was \$69,383.39.

Mr. Keenan: What was that figure?

Exam. Baumgartner: How much did you say, Mr. Solomon, I missed that?

The Witness: The assets of the corporation on December 31, 1953, was \$69,383.39; liabilities of \$50,447.82; leaving a net worth of \$18,935.57.

By Miss Kelley:

Q. Would you go on with your answer as to what that had to do with your recommendation?

A. Well, Kenneth Nelson wanted to borrow sums of [fol. 91] money for the corporation and the corporation had a poor credit standing.

Q. Did you participate in those efforts to borrow money?

A. No.

Q. Do you know whether he was successful or unsuccessful in his efforts?

Mr. Keenan: Objection. I believe that the witness should be led to state what if any sources of information he has concerning such a thing before a question like that is posed to him. It invites the witness to say: Yes, I knew, and such and such happened.

Exam. Baumgartner: Well, we can stop him when he says: yes, I knew, and ask him how he knew.

Mr. Keenan: Very well, sir.

The Witness: Kenneth Nelson—

Mr. Keenan: Objection. The witness is not going to say: yes, I knew.

Exam. Baumgartner: Just a moment. We'll find out here.

The Witness: Kenneth Nelson usually asked me regarding any financing he should do.

Exam. Baumgartner: Yes?

The Witness: And I did know that he went to the First National Bank of Manchester—

Mr. Keenan: Objection.

Exam. Baumgartner: All right. How did you know that, Mr. Solomon?

[fol. 92] The Witness: Because I advised him to go to the First National Bank in Manchester.

Exam. Baumgartner: How do you know whether he went or not?

The Witness: He told me so.

Mr. Barrett: I object.

Exam. Baumgartner: I sustain the objection.

By Miss Kelley:

Q. If Mr. Kenneth Nelson had been successful in obtaining loans, as their accountant would you have known?

A. I certainly would have.

Q. And how would you have gained that information?

A. By the books and records of the corporation.

Mr. Barrett: Now may I interject here, Mr. Examiner. There is a broad question. Mr. Nelson might have gone out and taken a personal loan for furniture, or something. I presume the question is directed to the corporation.

Miss Kelley: To the corporation, yes; and if I didn't so restrict it, it was my intention to, Mr. Barrett.

Mr. Barrett: Do I understand your answer is restricted to the corporation finances?

The Witness: That's correct, sir.

By Miss Kelley:

Q. Now you can proceed with your answer to my previous question, Mr. Solomon, with respect to what part you played in the negotiation of the transaction between Gilbertville and Nelson.

A. Early in 1954 I advised Kenneth Nelson to seek a [fol. 93] merger with Nelsons—

Exam. Baumgartner: With—

The Witness: The Nelsons and Sons Transportation Company—

Exam. Baumgartner: Just a moment. Will you read that answer, please.

[The answer was read as follows: "Early in 1954 I advised Kenneth Nelson to seek a merger with Nelsons—"]

The Witness: The Nelson and Sons Transportation Company.

By Miss Kelley:

Q. After the first advice, did you take any further part or further action with respect to the matter?

A. I continually recommended to Kenneth and I advised him to speak to Miss Kelley regarding a merger with Nelsons, and I understand Miss Kelley had recommended—

Mr. Keenan: Objection.

The Witness: —however, for different reasons.

Mr. Keenan: To what the witness understood Miss Kelley did, unless we get a little more concrete—

Exam. Baumgartner: Objection sustained.

By Miss Kelley:

Q. Now, with regard to your understanding with respect to me, will you tell what you did then and approximately when it was done?

A. Yes. I then spoke to Charles Chilberg of Nelsons about the possibility of merging.

Q. Do you know when that was, or approximately when you talked to him?

[fol. 94] A. Yes. It would be about April of 1954.

Q. Then did you take part in arriving at any determination with respect to the consideration that was to be involved in the transaction?

A. I did.

[fol. 101] . . . By Miss Kelley:

Q. Mr. Solomon, does Exhibit 9 portray the computation that you have made as to the shares of The L. Nelson and Sons Company stock to which Kenneth Nelson would be entitled to if the Commission approved this transaction?

A. That is correct.

Q. And, for the record, will you tell us how many shares that would result in, based on the computation, as of July 31, 1956?

A. Kenneth Nelson would receive seventy-eight shares of The L. Nelson and Sons capital stock.

Q. Now, under the terms of the agreement, as of what date will the computation be made to determine the exact number of shares which he would receive?

A. As of the date the merger is approved.

Exam. Baumgartner: There will be a recomputation at that time?

[fol. 102] The Witness: That's right, sir.

Mr. Keenan: Mr. Examiner, I presume the witness means approved by a final order of the Interstate Commerce Commission?

The Witness: That is correct.

Exam. Baumgartner: Now, just a moment. Exhibit No. 9 for identification is similar to the exhibits that were attached to Exhibit C-1 of the application, except that Exhibit 9 for identification relates to a later date?

The Witness: That's right, sir.

.

[fol. 143] SANOL J. SOLOMON resumed his testimony as follows:

Cross examination.

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[fol. 144] Q. Mr. Solomon, how long have you worked for The L. Nelson and Sons Transportation Company as accountant?

A. Since January of 1949.

Q. And what sort of arrangement do you have? Are you a salaried employee?

A. No, sir; I am an independent public accountant.

Q. You work as an independent contractor?

A. Yes, sir; that's right, sir.

Q. How much of your working time do you devote to the affairs of this company?

A. My working time?

Q. Yes, sir.

A. Well, outside of my staff—are you referring to, or just myself?

Q. Well, do you employ others?

[fol. 145] A. Several others.

Q. Who also work for the company?

A. No, I am the only one who goes there of our company.

Q. Well, can you give us a rough estimate of how much time you spend there?

A. Yes.

Miss Kelley: I object because I don't think it is clear. Mr. Mueller, is it your position you are only interested in the number of hours that Mr. Solomon spends himself on The L. Nelson work, or where he employs his staff as a public accountant, and his staff do the work?

Mr. Mueller: I am interested in anything which will enlighten us on the subject, whether it is he or whether it is his employees.

Miss Kelley: I didn't think your question was clear as to just what you expected.

The Witness: By length of time, are you referring to the percentage of my working time or to—

By Mr. Mueller:

Q. How many days a week do you spend at The L. Nelson Transportation Company?

A. It will be about three to five days a month.

Exam. Baumgartner: Is that of your own personal time?

The Witness: That's right, sir.

By Mr. Mueller:

Q. Do you have employees who also devote time to the affairs of this company?

[fol. 146] A. No, they would be the office employees only.

Q. Well, now, that isn't clear to me.

A. My office employees—in other words, I do the audit and there are certain mechanical functions of accounting that is taken care of by my office.

Q. And that is done in your office?

A. That's right, sir.

Q. And not at the premises of The L. Nelson Transportation Company?

A. That's right.

Q. Do you also devote time to the affairs of Gilbertville Trucking Company?

A. Yes, I do. When I made that statement I meant for all of them together, three to five days a month.

Q. Can you divide that up for us?

A. Yes, very easily.

Q. How much time is devoted to Gilbertville and how much time is devoted to L. Nelson?

A. I would say two days a month to Nelson and a day a month to Gilbertville.

Q. Well, now, what is your arrangement with the Gilbertville Company? Are you again an independent contractor?

A. Yes, sir.

Q. When did you begin working for Gilbertville as an accountant?

A. At the same time Kenneth Nelson assumed control of [fol. 147] the capital stock, which is March 1st of 1953.

Q. Where are the Gilbertville records kept?

A. The Gilbertville records are kept in Ellington, or you may call it Rockville.

Q. Are those records under your jurisdiction?

A. They are.

Q. What sort of records are they that are under your jurisdiction there at Ellington, or Rockville?

A. It would be the same as any other motor carrier's. It has the various journals and ledgers and supporting schedules.

Q. And are those records housed together with the records of The L. Nelson Transportation Company?

Miss Kelley: I object to the question.

Exam. Baumgartner: On what ground?

Miss Kelley: The form of the question: are they housed together. I don't know what is meant by that term.

Exam. Baumgartner: What was the question?

Mr. Mueller: I asked him whether the records were housed together with The L. Nelson Transportation Company.

Miss Kelley: I object to the term—

Mr. Mueller: Are they under the same roof?

Miss Kelley: Whether they are under the same roof or not is immaterial.

Exam. Baumgartner: This is cross-examination. Miss Kelley. I think he has a right to make an inquiry along that [fol. 148] line: as to where the records are from which he gained the knowledge which enabled him to testify on direct examination.

The Witness: Some of the records are in a large safe that would have some of the records of Nelson's in it.

By Mr. Mueller:

Q. Where is that safe located?

A. At 25 West Road, Ellington, Connecticut.

Q. Can you describe those premises for us?

A. Yes. It is a two-story frame building, originally put up, probably, as a cottage; and the second floor is devoted entirely to Gilbertville Trucking Company. The first floor is devoted to Nelson's.

Q. Would you have to go through the Nelson terminal premises to get to the Gilbertville office?

A. That's right, sir.

Exam. Baumgartner: Is this terminal premises?

The Witness: Not terminal—you are referring to the office, I believe, weren't you?

Q. Office: premises.

A. Office premises.

Q. Is that facility also used as a terminal at Ellington?

A. The separate building in the back would be the terminal.

Q. It is used by Gilbertville and Nelson, yes.

Q. Both carriers use the premises?

A. To my knowledge, yes.

Q. Do you know whether records of Gilbertville are main-
[fol. 149] tained anywhere else?

A. No. The main records are kept in the Gilbertville office, which is located in Ellington.

Q. Are there any kept at Ware, Massachusetts?

Miss Kelley: I can't hear your question.

Q. Are there any kept at Ware, Massachusetts?

A. No, none, I believe. I don't—

Exam. Baumgartner: Well, do you know?

The Witness: There is no terminal at Ware, Massachusetts, so there can't be any records kept there, I believe.

By Mr. Mueller:

Q. Do you know where the Gilbertville terminals are located?

A. Yes, I do.

Q. Will you designate the points?

A. Yes, sir. Gilbertville, Massachusetts; Ellington, Connecticut; Woonsocket, Rhode Island; Newton, Massachusetts; and New York City, New York.

[fol. 152] By Mr. Mueller:

Q. Is the so-called Gilbertville terminal of the Gilbertville Trucking Company located at the Ware, Massachusetts, Airport?

A. I wouldn't know that it is located there.

Q. There is a terminal which is known as the Gilbertville terminal?

A. Yes, sir.

Q. Up in Massachusetts?

A. Gilbertville, Massachusetts.

Q. Gilbertville?

A. Yes, sir.

Q. Now on direct examination, Mr. Solomon, you stated that you consult frequently with Charles G. Chilberg, [fol. 153] president of L. Nelson and Sons. Have you ever seen Kenneth A. H. Nelson on the premises of The L. Nelson Transportation Company at Ellington, Connecticut?

A. In order to reach the Gilbertville offices, Kenneth Nelson would be on the premises of Nelson's.

[fol. 155] [The question was read by the reporter as follows: "Have you at any time since Kenneth A. H. Nelson purchased the Gilbertville stock consulted with him about the affairs of The L. Nelson Transportation Company?"]

Mr. Mueller: I submit, Mr. Examiner, it is perfectly proper.

Exam. Baumgartner: He is going to answer the question.

The Witness: Consulted with who? Be specific.

By Mr. Mueller:

Q. Kenneth Nelson?

A. Kenneth Nelson?

Q. Concerning the affairs of The L. Nelson Transportation Company?

A. Ever since—for the merger, yes, sir.

Miss Kelley: Has it been with relation to matters having to do with the preparation for this proceeding, or the application?

The Witness: That is correct.

By Mr. Mueller:

Q. You have consulted with him at no time concerning matters pertaining to operations or financing?

A. That is right.

Q. Of the L. Nelson Transportation Company?

[fol. 156] A. That's right.

Q. Your only consultations have been with respect to the filing of this application?

A. That's right, sir.

Q. Referring now, Mr. Solomon, to January of 1953, when, you said on direct examination, you were asked to determine the feasibility of a purchase of the Gilbertville stock, who asked you—

A. Yes, sir.

Q. —to make this determination?

A. I was in the hospital at the time, and I have a letter sent to me by Kenneth Nelson.

Exam. Baumgartner: You were where at the time? I didn't get that.

The Witness: I was in the hospital at the time, and I have a letter here that was sent to me by Kenneth Nelson. I have the letter, if you want me to read it.

[fol. 158] By Mr. Mueller:

Q. Now you say, Mr. Solomon, that this request was addressed to you by whom?

A. By Kenneth Nelson.

Q. In the form of a letter?

A. Yes, sir.

Q. On its receipt what did you do?

A. Well, it was some time later, probably two weeks later, that I was able to audit the books and records of Gilbertville at—

Q. Where did you do that?

A. Yes; at Springfield, Massachusetts, in the office of the accountant Mahoney.

Q. Now, I believe you said that—

A. Francis J. Mahoney.

Q. —you had a conference with an attorney named Paroshinsky and another man named Zanden?

A. That's right, sir.

Q. And Mr. Mahoney. When and where did that conference—

[fol. 159] A. Yes.

Q. —occur?

A. Yes. It took place on July 24, 1953, with the final closing about—it was at the office that is held jointly by Attorney Samuel Zanden—z-a-n-d-e-n—who is attorney for Mr. Vachon the seller of the stock and the—it's a joint

office with Francis J. Mahoney, the accountant for Vachon, and prior to that to the Gilbertville Trucking Company. It's located at 31 Elm Street, Springfield, Massachusetts.

Q. Were you alone with these three men?

A. No, at that time I was not alone.

Q. Who else was present?

A. Kenneth Nelson was present with me, and there would be Wilfred V. Vachon and Attorney Arthur Paroshinsky.

Q. Were any of the other Nelsons or Chilbergs there?

A. Definitely not.

Q. Was a man named Mobley present?

A. I never heard of the name before.

Q. Now, Mr. Solomon, on July 24, 1953, the date when this conference took place, were you employed as an accountant by The L. Nelson and Sons Transportation Company?

A. That is right, sir.

Q. That is, your employment was continuing through that time?

A. Yes.

Q. Now, can you recall the date of the stock transfer [fol. 160] from Vachon to Kenneth Nelson and Arthur Chilberg?

A. I'm sorry, the stock transfer from Arthur—from Kenneth Nelson—

Q. I'm sorry, the stock transfer from Vachon to Nelson and Chilberg?

A. The stock transfer from Mr. Vachon to Kenneth Nelson and Oscar Herbert Chilberg took place on July 24, 1953.

Q. It occurred, then, on the date of the transfer?

A. That's right.

Q. On the date of the conference, I'm sorry?

A. In other words, when the escrow was finally determined, the escrow fund was finally settled.

Q. Was the stock, were the stock certificates actually passed over?

A. That's right, sir.

Q. As of that date?

A. Yes, sir.

learn these facts about which you are about to testify and have been testifying in regard to the transactions?

The Witness: I did, sir.

Exam. Baumgartner: I think that qualifies him.

Mr. Keenan: Very well, I think any further questions should be postponed until cross-examination.

Exam. Baumgartner: Yes.

Mr. Keenan: Thank you, Mr. Examiner.

By Miss Kelley:

Q. Now, Mr. Solomon, will you answer my previous question, when I asked you if you would tell us the details in connection with that transaction, the consideration, and so forth?

A. The capital stock, a hundred shares, was sold for [fol. 56] \$35,000, including a note payable of \$10,000 to Wilfred J. Vachon with interest, with the first payment of \$500 to be made on August 1, 1953, and each three months thereafter, and the remaining \$25,000 was placed in cash by Kenneth Nelson, who had made a loan personally with Oscar Herbert Chilberg from the First National Bank of Manchester for a total loan to be made at that time of \$30,000. The rest of the difference of \$5,000 was put in as working capital by Kenneth Nelson.

Q. Have you completed?

A. I have.

Q. I didn't quite understand one point that you said. You said that Kenneth Nelson had made a personal loan with a bank and then—

Exam. Baumgartner: Just a moment. And gotten a loan from the bank?

Miss Kelley: Yes.

The Witness: I believe I said Kenneth Nelson and Oscar Chilberg secured a loan from the First National Bank of Manchester for \$30,000.

Exam. Baumgartner: Now, is that a personal loan?

The Witness: A personal loan, sir, that is correct.

By Miss Kelley:

Q. And were Kenneth Nelson and Oscar Chilberg co-makers of the note, if you know?

A. That is right. That is correct.

Q. Was that note secured by any property?

[fol. 57] Q. It was secured—there probably was collateral placed behind it.

Q. That is what I mean.

Exam. Baumgartner: That is what she is asking you.

Q. Do you have any knowledge of the collateral?

A. The collateral?

Q. Whether it was a secured note or not?

A. I do not have any knowledge as to what was the collateral.

Q. But you do know there was collateral?

A. That's right.

[fol. 58] By Miss Kelley:

Q. Mr. Solomon, in answer to a question of mine just before lunch, you were telling about the consideration that was paid by Kenneth Nelson for the stock of Gilbertville Trucking Company, and in discussion with some of the opposing counsel it appeared they felt the record was not clear on that point. So will you tell us again what the consideration was and how it was paid?

A. The full price is \$35,000 plus cash, good accounts receivable, pre-paid items less liabilities.

Q. Wait a minute. Now the cash, the pre-paid items, and the accounts receivable—were those the accounts receivable and the cash that were in the Gilbertville Corporation on March 1 of—what year was that—1953?

A. That's right, at the beginning of business on March 1, 1953.

Q. And Mr. Vachon, the previous stockholder of Gilbertville, was to receive a sum equivalent to those items on that date, is that correct?

A. That's right.

Q. Plus \$35,000?

[fol. 59] A. That's right.

Q. How about the liabilities of Gilbertville? Who was to assume those.

A. The liabilities were assumed by the successor corporation, Gilbertville Trucking Company under Kenneth Nelson.

Q. Did I understand you to say the accounts receivable, cash, and pre-paid items as of March 1, or a sum equal to them, were to go to Mr. Vachon, but that he had nothing to do with the liabilities which had arisen?

A. He did. That was charged against him.

Q. I'm sorry, I'm not quite clear on that.

A. All right. The full sales price is \$35,000.

Exam. Baumgartner: Now let's get this clear. That is \$35,000 to Mr. Vachon for his stock in Gilbertville Trucking Company?

The Witness: That's right, sir.

Exam. Baumgartner: He was to get \$35,000 plus accounts receivable?

The Witness: Plus any cash that the corporation had.

Exam. Baumgartner: Plus \$35,000 plus cash in the corporate till, or to its credit?

The Witness: That's right.

Exam. Baumgartner: And what is the third item?

The Witness: Accounts receivable and pre-paid items, such as registrations.

[fol. 60] Exam. Baumgartner: Now, you spoke about Mr. Vachon having something to do with the Gilbertville Trucking Company liabilities. What were you about to say about that?

The Witness: The Gilbertville Trucking Company, Incorporated, had liabilities as of the end of February 28, 1953, and that was deducted from this cash accounts receivable and pre-paid items. Still the full price is \$35,000.

Exam. Baumgartner: You mean the deduction was made before you arrived at this \$35,000 plus these other two items? The deduction was made prior to that?

The Witness: The deduction is: \$35,000—

Exam. Baumgartner: The deduction was from the \$35,000?

The Witness: From the \$35,000 for the liabilities.

Exam. Baumgartner: Oh, I see. Then he got something less than \$35,000 plus these two items?

The Witness: No. He received the full \$35,000 and he was given credit for whatever cash the corporation had in accounts receivable and pre-paid items.

Exam. Baumgartner: Less what?

The Witness: Less liabilities that the corporation had.

Exam. Baumgartner: The liabilities were offset against the accounts receivable?

The Witness: That's right, sir.

Exam. Baumgartner: And the pre-paid items?

The Witness: That's right.

[fol. 61] Exam. Baumgartner: So, I see, he got the \$35,000 in full, plus whatever balance was left of these other two items after deduction for liabilities?

The Witness: Yes. The corporation assumed all the assets and the liabilities.

By Miss Kelley:

Q. Was the sum of the liabilities less than the sum total of the cash, good accounts receivable, and the pre-paid items, or were they about even?

A. The liabilities of the corporation were greater.

Mr. Keenan: Than what?

The Witness: Than the—

By Miss Kelley:

Q. Than those assets that were in the corporation?

A. That's right.

Q. The assets consisting of accounts receivable, cash, and pre-paid items?

A. That's right.

Q. Now, you have said that Mr. Vachon was to receive the full \$35,000. Well, then, did he pay into the corporation or did he assume some of those liabilities over and above the amount of the three asset items which he was to get the benefit of?

A. Mr. Vachon on selling his stock does not assume any

of the assets, nor does he get any of the liabilities charged against him. The successor in the corporation has to pay the liabilities of the corporation.

[fol. 62] Q. But those items were taken into consideration in arriving at the consideration for the stock, is that correct?

A. Still it is \$35,000.

[fol. 64] By Miss Kelley:

Q. Mr. Solomon, have you looked at the agreement that you referred to between Kenneth Nelson and Mr. Vachon with respect to the purchase of Gilbertville stock?

A. Yes, I have.

Q. After refreshing your recollection is the testimony that you previously gave as to the consideration for that stock correct?

A. That is correct.

Exam. Baumgartner: Well, Miss Kelley, that's correct; but, certainly not clear in my mind. First he tells us that Mr. Vachon was to get \$35,000 plus cash in the company's treasury, plus pre-paid items. Then he follows that by saying minus the liabilities of the Gilbertville Trucking Company. Now, I still don't understand how much Mr. Vachon [fol. 65] received over and above these liabilities.

By Miss Kelley:

Q. Mr. Solomon, can you answer the Examiner's question?

A. Yes. Mr. Vachon's full purchase price is \$35,000.

Q. Is that the—

Exam. Baumgartner: Just a moment. This thing is very confusing. Maybe I should have studied accounting. You said a while ago Mr. Vachon was to get \$35,000 plus the cash in the company's treasury?

The Witness: The—

Exam. Baumgartner: Plus cash?

The Witness: I would say Mr. Vachon would get credit for any cash in the company's treasury as of the close of business February 28, 1953.

Exam. Baumgartner: Credit?

The Witness: Credit, meaning to—\$35,000 plus any cash in the corporation, any good accounts receivable, any pre-paid items.

Exam. Baumgartner: Now, he is to get credit for that?

The Witness: That's right.

Exam. Baumgartner: But he is to be debited with the liabilities of the company? Isn't that what you said a while ago?

The Witness: That's right, because the successor—

Exam. Baumgartner: Now, after you strike the balance, you said the liabilities were greater than these assets, [fol. 66] the cash plus pre-paid items?

The Witness: That's right.

Exam. Baumgartner: So, did Mr. Vachon receive less than \$35,000?

The Witness: He must have received less than \$35,000.

Exam. Baumgartner: That is what I am getting at. How much less, can you say?

The Witness: If you let me go through my records here I could tell you.

Exam. Baumgartner: Well, did you know at the time how much it was?

The Witness: Sure, I verified it.

Exam. Baumgartner: All right. You want to refresh your recollection, is that the point?

The Witness: Surely.

Exam. Baumgartner: All right.

The Witness: May I make one thing clear. The successor corporation assumes the liabilities.

Exam. Baumgartner: What has that got to do with Mr. Vachon after he has got the stock?

The Witness: Not with Mr. Vachon. Let's call it the corporation itself. You have to pay all the liabilities off. In other words, to Kenneth Nelson. It cost him \$35,000, no more.

Mr. Keenan: Mr. Examiner, the witness is referring to a successor corporation concerning which, as far as I know, [fol. 67] there has been no testimony heretofore.

The Witness: It's the same corporation. I'm merely saying under a new management, new stockholder.

Exam. Baumgartner: He has a little misnomered that. Do you remember what the question was?

The Witness: Yes.

Exam. Baumgartner: The question was how much did Mr. Vachon actually receive for his stock? Are you ready to answer?

The Witness: Yes.

Exam. Baumgartner: Proceed.

The Witness: The assets were \$13,000—meaning the receivables, there was no cash there—receivables, unexpired insurance and pre-paid registration—

Exam. Baumgartner: Well, Mr. Solomon, can you give us a fairly accurate estimate? We don't want it right down to pennies.

The Witness: Yes. It's around—you would come out with—

Exam. Baumgartner: Net.

The Witness: —around \$23,000.

Exam. Baumgartner: Approximately \$23,000?

The Witness: That's right, sir. The liabilities were \$14,992.36. The assets were approximately—I could give you exact figures—\$2,000.

Exam. Baumgartner: That is close enough.

Miss Kelley, pardon my interrupting your questioning, [fol. 68] but I felt I had to get this clear.

Miss Kelley: I'm sorry. Can I have that figure? I was trying to reach a stipulation with Mr. Williams. So it's \$23,000 net to Mr. Vachon, is that correct?

Exam. Baumgartner: Approximately \$23,000 net Mr. Vachon received.

Mr. Williams: Mr. Chairman, while that is being discussed, as I recall it, Mr. Solomon said something about a note to Mr. Vachon, and I wonder if that could be cleared up also at this time.

Miss Kelley: Yes.

By Miss Kelley:

Q. Can we clear up the payment—

A. The payment to get \$35,000—

Q. No. It was how Mr. Vachon received the money, or what he received?

A. He received a note from Kenneth Nelson and Oscar Herbert Chilberg—excuse me—that is correct—of \$10,000 with four percent interest with the first payment of \$500, August 1, 1953, and every three months thereafter.

Exam. Baumgartner: Now, that note went to Mr. Vachon?

The Witness: That's right, sir.

Exam. Baumgartner: In part payment of this \$23,000?

The Witness: That's right, sir.

Exam. Baumgartner: Of what did the balance consist?

The Witness: The balance consisted of cash.

[fol. 69]. Exam. Baumgartner: Cash: \$13,000, approximately?

The Witness: That's right, sir.

By Miss Kelley:

Q. And when and how was that paid? Did that go into escrow for a period of time, or was it paid right over to Mr. Vachon?

A. It went over for a period of time, until July of 1953, July 24, 1953.

Mr. Keenan: Does the witness mean to say it went into escrow?

Q. Did it go into escrow, did you say, until that date?

A. Until July 24, 1953.

Q. And what was the purpose of the cash being deposited in escrow?

A. In order to pay off, in order to make certain of these liabilities.

Exam. Baumgartner: In order to be sure that the liabilities would be liquidated first?

The Witness: That's right.

By Miss Kelley:

Q. What other assets or tangible assets, first, did the Gilbertville Trucking Company have at that time?

A. They had eight trucks, tractors, and trailers all together.

Q. Can you tell me how many trucks—

Mr. Keenan: Excuse me, Mr. Examiner. Counsel has asked what other assets did the Gilbertville Trucking Company have, and I don't know with relation to what she is using the word "other." Other than what?

[fol. 70] Exam. Baumgartner: Other than the cash in the company's account we have been talking about.

Mr. Keenan: Is that the \$13,000 to which the witness has testified so far?

Exam. Baumgartner: No. That is the amount of money Mr. Vachon—

Mr. Keenan: My notes don't reflect the amount of cash in the company's accounts. That is the reason I asked.

Exam. Baumgartner: That hasn't been mentioned yet. I don't think it has. Did you say—

The Witness: I did say there was no cash left in the corporation.

Exam. Baumgartner: I see.

Mr. Joseloff: He said about \$2,000 in receivables and pre-payments.

Exam. Baumgartner: That's it. Now we are talking about assets other than this \$2,000 item for receivables.

Mr. Keenan: Thank you, Mr. Examiner.

By Miss Kelley:

Q. Can you tell me how many of those eight items were trucks? How many tractors and trailers?

A. Yes, I can. One straight truck, three tractors and four trailers.

Q. Do you have knowledge as to whether or not they were registered and operating on March 1, 1953?

A. I believe I would. According to this purchase agreement [fol. 71] it calls it rolling stock.

[fol. 78] Q. Have you acted as the public accountant for Gilbertville Trucking Company since March of 1953?

A. I have.

Q. Now, since that time, March of 1953, who were the

officers and directors of Gilbertville Trucking Company and the stockholders?

A. When Kenneth Nelson on March 1, 1953, took over the capital stock he was president and treasurer. Oscar Herbert Chilberg—I'm sorry. Kenneth Nelson was merely president. Oscar Herbert Chilberg was the treasurer.

Exam. Baumgartner: In what year, now?

The Witness: March 1, 1953.

Q. Do you have the other officers and directors at that time?

A. The only other officer at that time was attorney Arthur Paroshinsky.

Q. Were there three directors?

[fol. 79] A. Three of them were directors.

Q. Who held the stock at that time: March 1, 1953?

A. Kenneth Nelson, Oscar Herbert Chilberg, and Attorney Paroshinsky.

Q. How many shares were held by each?

A. Kenneth Nelson had fifty-one shares; Oscar Herbert Chilberg, fifty-one shares; and Attorney Paroshinsky, one share, for a total of 100 shares.

Exam. Baumgartner: Now, in what corporation?

The Witness: Gilbertville Trucking Company, Incorporated.

Exam. Baumgartner: Only a hundred shares altogether?

The Witness: That's right, sir.

Exam. Baumgartner: Where was the other—oh, fifty; yes, I see.

By Miss Kelley:

Q. At some time after March of 1953 was there a change in the stockholders of the Gilbertville Trucking Company?

A. Yes. In 1954 Oscar Chilberg resigned as treasurer.

Mr. Barrett: When in 1953, if you don't mind, while you're at it?

The Witness: I don't have the date available right now.

Exam. Baumgartner: Can you give us the approximate date?

Miss Kelley: To save time, if the opposition would accept it, I have that date as January 19, 1954.

Exam. Baumgartner: When?

[fol. 80] Miss Kelley: January 19, 1954.

Exam. Baumgartner: Any objection to Miss Kelley's statement?

Mr. Keenan: Anything Miss Kelley assures us is true, why, we will—

By Miss Kelley:

Q. Does that refresh your recollection?

A. That's right, either January or February of '54.

Q. And did Oscar Chilberg sell his stock in the Gilbertville Trucking Company at that time?

A. He sold it to Kenneth Nelson.

Q. And thereafter who were the stockholders?

A. Kenneth Nelson, fifty-one shares; his wife Phyllis Nelson, twenty-four shares; John Kashady—who is supervisor of the Gilbertville terminal—twenty-four shares; then for the hundredth shares, that is still Arthur Paroshinsky, Clerk, one share.

Mr. Keenan: Mr. Examiner, I fail to note how many shares Phyllis Nelson had.

Miss Kelley: Twenty-four shares.

Mr. Keenan: Thank you kindly.

By Miss Kelley:

Q. Do you have knowledge as to the arrangement with John Kashady as the registered holder of the stock?

A. Yes.

Q. Did he purchase the stock?

A. No—

Mr. Keenan: Objection unless the sources of such knowledge [fol. 81] are explained.

By Miss Kelley:

Q. Will you tell us the sources of your knowledge?

A. Yes. Kenneth Nelson had spoken to me about it

were possible to give twenty-four shares to John Kashady in order for John Kashady to have prestige in his job of supervisor of the Gilbertville terminal?

Exam. Baumgartner: What was your question, Miss Kelley, that preceded this last?

Miss Kelley: Could we have it read back?

[The question was read as follows: "Will you tell us the sources of your knowledge?"]

Mr. Keenan: My objection remains, because the witness has not stated in a manner which I can understand what the sources of his information, of his knowledge, is. In other words, did Kenneth Nelson tell him?

The Witness: I'm sorry, the stock transfer book and the—you asked for consideration?

Exam. Baumgartner: No. He is asking you how you came to know what you have been asked about—

The Witness: That's right.

Exam. Baumgartner: —the stock transfer book and the minute book of the corporation, which you examined?

The Witness: That's right, sir.

Mr. Keenan: Mr. Examiner, could the witness be instructed to just simply tell us what is in the book, rather than telling us a lot of other facts?

Exam. Baumgartner: If we try to observe all the niceties we are not going to get through here in the next ten years.

Mr. Keenan: I agree. Could I make it plain, Mr. Examiner, that I don't want to be obstructive. I just want to be able to competently examine the witness, Mr. Examiner, as to what he got in on direct.

Exam. Baumgartner: You can examine him on the basis of what the books show.

Mr. Keenan: If he got it on the basis of what somebody else said—

Exam. Baumgartner: You can object, then, and move that it be stricken.

Mr. Keenan: Of course, that is correct.

Miss Kelley: I believe the question is still pending.

Q. Did you complete your answer?

A. I think I did.

Exam. Baumgartner: I thought he completed it.

By Miss Kelley:

Q. At January 19, 1954, who had been the officers of Gilbertville Trucking Company?

A. January 19, 1954?

Q. Yes, when Oscar Chilberg resigned as the treasurer.

A. Kenneth Nelson, president and treasurer, and Arthur Paroshinsky as clerk, and the above two plus Phyllis Nelson [fol. 83] and John Kashady as directors.

Exam. Baumgartner: How many were directors?

The Witness: Four altogether.

Exam. Baumgartner: Four?

The Witness: Four.

Exam. Baumgartner: That was Phyllis—

The Witness: Phyllis Nelson, Kenneth Nelson, John Kashady, and Arthur Paroshinsky.

By Miss Kelley:

Q. That is Phyllis Nelson, I believe you already said, is the wife of Kenneth Nelson?

A. That's right.

Q. And Arthur Paroshinsky is the attorney—

A. Arthur Paroshinsky is the attorney.

Q. In connection with the affairs of Gilbertville Trucking Company, financial matters, who did you discuss such matters with?

A. Only with Kenneth Nelson.

Q. And—

• • • • •

[fol. 84] By Miss Kelley:

Q. Mr. Solomon, were the financial exhibits, namely, Exhibit B-4, a balance sheet statement of the Gilbertville Trucking Company as of May 31, 1955, and the operating statements, Exhibit B-6, which covers a period of January 1, 1955, to May 31, 1955, and Exhibit B-6(3), being the operating statement of Gilbertville Trucking Company from January 1, 1953, to December 31, 1953, prepared by you?

A. They were. Incidentally, I had a copy here before, but it's not here now. May I have a copy?

Q. I guess I have your copy. I'm sorry.

A. Thank you.

/

[fol. 87] Q. Are you familiar with the terms of the agreement between the parties, the terms involved in the proposed merger of Gilbertville and Nelson?

A. I am.

Q. And under that agreement it is proposed to—

Exam. Baumgartner: Miss Kelley, I am afraid you are going to have an objection here unless he tells us how he became familiar with the matter.

By Miss Kelley:

Q. Mr. Solomon, did you have any part in the negotiations in connection with the proposed merger of Gilbertville and Nelson?

Mr. Keenan: Objection, and I request that counsel be instructed not to lead the witness.

Exam. Baumgartner: This is preliminary, Mr. Keenan. I think she is entitled to ask him leading questions preliminarily.

Mr. Keenan: Yes, sir; there have been in my opinion—I respectfully say—a number of leading questions thus far, and I have thought I had better start to state my opinion of them as they come up.

Exam. Baumgartner: I realize they are leading, but counsel get into that once in a while.

By Miss Kelley:

Q. Would you give me an answer, Mr. Solomon. Did you have part in the negotiations, or did you—

A. Yes, I did.

Q. And will you tell us what your activities were?

[fol. 88] A. Yes.

Q. Prior to negotiating the agreement between these parties?

Q. I said July.

A. It's June 30, I'm sorry.

Exam. Baumgartner: The correct date is June 30, 1951, is that right?

The Witness: That is correct.

Q. When the shares held by Oscar were sold to Charles Chilberg?

A. That's right.

[fol. 34] Q. Up to June 30, 1951, Oscar Chilberg had been an officer and director, I believe you testified, of The L. Nelson and Sons Company?

A. That is right.

Q. And up to September 22, 1951, Kenneth Nelson had been an officer and director of The L. Nelson and Sons Company?

A. He was. That's correct.

Q. Now, with the sale of their stock was there a change in so far as the officers and directors were concerned?

A. On the sale of their stock?

Q. Yes. On the sale of their original shares, did they continue on as officers and directors of The L. Nelson Company?

A. Oh, no. It just remained with the estate, Charles Chilberg and Clifford Nelson.

Q. So that after those two dates, namely, June 30, 1951, and September 22, 1951, Oscar Chilberg and Clifford Nelson were no longer officers or directors of L. Nelson and Sons Company?

A. That is correct.

Miss Kelley: Did I say Kenneth Nelson there?

Mr. Keenan: Yes. You meant Clifford, correct?

Mr. Williams: No.

Miss Kelley: No.

Mr. Joseloff: She meant Clifford—

Exam. Baumgartner: Read the question back, Miss Reporter, please.

[fol. 35] [The question was read by the reporter as follows: "So that after those two dates, namely, June 30, 1951,

and September 22, 1951, Oscar Chilberg and Clifford were no longer officers or directors of L. Nelson and Sons Company?"]

Miss Kelley: Strike that. I'll ask him:

Q. If Oscar Chilberg and Kenneth Nelson were no longer directors?

A. That's right.

Q. And have either of them, Oscar Chilberg or Kenneth Nelson, been officers or directors of The L. Nelson and Sons Company since that time?

A. No, they have not been.

Mr. Keenan: Again, if the Examiner please, I don't know what the time is that counsel refers to. I can guess it, but it is not precise on the record.

Exam. Baumgartner: I think it is pretty plain that we are talking about the period between June 30, '51, and September 22, 1951.

Miss Kelley: And the present date.

Exam. Baumgartner: Am I correct?

Miss Kelley: Between June 30, 1951-September 22, 1951, on the one hand, and the present time, on the other.

Mr. Keenan: With respect to whom? With respect to Kenneth Nelson?

Miss Kelley: To both Kenneth Nelson and Oscar Chilberg.

[fol. 36] Mr. Keenan: You see where the confusion exists, because Kenneth Nelson is reflected on the record as being an officer between June 30 and September 22. That is the reason I ask for clarification, if the Examiner cares to inquire.

Exam. Baumgartner: Well, is it clear of record now that these two sellers of shares of stock that we have just been speaking about ceased to be officers and directors at the time of the sale of the stock, and have not since been officers or directors of L. Nelson and Company?

By Miss Kelley:

Q. Is that correct, Mr. Solomon?

A. That is correct.

Mr. Keenan: And finally, Mr. Examiner, could I inquire whether that is correct with respect to Oscar Chilberg from the date June 30, 1951, and with respect to Kenneth Nelson from the date September 21, 1951, in each case, until the present date?

The Witness: That is correct.

Mr. Keenan: Thank you.

The Witness: September 22, for the record.

By Miss Kelley:

Q. During the summer of 1951, did a third member of the family sever his connection with L. Nelson and Sons Company, of the Nelson-Chilberg family?

A. During the summer of 1951, Howard Chilberg left the employ of the company.

Mr. Keenan: Mr. Examiner, may the record reflect that the witness is referring to a memorandum with which to refresh his recollection in giving his testimony, and may [fol. 37] the record note my desire at a time that meets counsel's convenience to examine that memorandum myself?

Exam. Baumgartner: The record may so show.

By Miss Kelley:

Q. Mr. Solomon, do you have knowledge as to when the members of the Nelson-Chilberg family negotiated for the sale of stock which they inherited under their mother's will?

A. Yes, I do.

Q. Will you tell us about that?

A. January—you want the sale of stock, of the inherited stock?

Q. I want to know if you know when they arranged for the sale of the stock and then when it was actually sold?

A. Yes. When Herbert Chilberg sold his share of stock in June of '51, he also arranged that when he would receive his forty-two shares that the estate then held, the stock would be sold to Charles Chilberg.

Mr. Keenan: Mr. Examiner, again for clarification, may I inquire if when the witness refers to Herbert Chilberg, he is referring to Oscar—

Miss Kelley: I will straighten these things out if you will just give me an opportunity, and I think we will get along faster.

Mr. Keenan: May I finish, Mr. Examiner? May I inquire for clarification whether when the witness is referring to Herbert Chilberg he means to designate someone previously identified as Oscar Herbert Chilberg?

[fol. 38] Exam. Baumgartner: I was about to ask him the same question.

Miss Kelley: And so was I, Mr. Examiner, for clarification.

The Witness: I'm sorry.

Exam. Baumgartner: Your answer is yes?

The Witness: Oscar Herbert Chilberg is correct.

By Miss Kelley:

Q. Had you finished your answer, Mr. Solomon?

A. No, I have not. And Kenneth Nelson, when he left the employ of the company on September 22, 1951, when he sold his fifty shares, had arranged to sell the forty-two shares he would receive from the estate.

Q. Now, do you have knowledge as to when other members of the family arranged to sell their shares, shares inherited under the will?

A. Yes. Do you desire the dates?

Q. If you have them.

A. Yes. Howard, who had left during the summer of 1951, had arranged to have his forty-two shares sold when he was to get it from the estate.

Mr. Keenan: Could I hear again the date when Howard left?

The Witness: Howard left in the summer of 1951.

Mr. Keenan: And again, for clarification, Mr. Examiner, could I inquire what office Howard held? I ask this because my notes do not reflect that Howard held any office with the corporation.

Exam. Baumgartner: The testimony was simply that he [fol. 39] left the employ of the company.

Mr. Keenan: Thank you, sir.

Exam. Baumgartner: He was not an officer?

The Witness: That's right, sir.

Exam. Baumgartner: What position did he hold?

The Witness: Office manager.

Exam. Baumgartner: Office manager?

The Witness: Yes, sir.

By Miss Kelley:

Q. And did Kenneth Nelson and Oscar Chilberg continue as employees of The L. Nelson and Sons Company after each of them sold their original shares of stock?

A. No, they did not.

Q. Now, I don't know whether you have already given us the date when the stock that was received under the will of their mother was released by the executors?

A. The stock was released on January 24, 1953, and Kenneth Nelson sold his forty-two shares to Clifford Nelson. Oscar Chilberg sold his forty-two shares on January 24, 1953, to Charles Chilberg. Howard Nelson—I'm sorry, his name is Howard Chilberg, sold his forty-two shares on February 28, 1953.

Mr. Keenan: Who sold what on February 28?

The Witness: Howard Chilberg.

Mr. Keenan: Mr. Examiner, I don't know what was sold and to whom, I'm sorry, but I find it difficult to keep notes.

Exam. Baumgartner: Howard sold his forty-two shares. [fol. 40] Mr. Joseloff: To whom?

Exam. Baumgartner: To whom, Mr. Witness?

The Witness: Howard Chilberg sold his forty-two shares to Charles Chilberg.

Exam. Baumgartner: At what time, what date?

The Witness: February 28, 1953.

By Miss Kelley:

Q. Do you have the dates and names of other persons—

A. What is that?

Q. Do you have the names and dates when other members of the family sold the shares that they inherited?

A. Yes, I have. Ruth Nelson Widham at that time remarried, and her name was Nyberg—n-y-b-e-r-g—and sold her shares from the estate in February, 1953.

Mr. Joseloff: To whom?

The Witness: To Clifford Nelson.

By Miss Kelley:

Q. Were there other sales by the heirs?

A. Other sales by the heirs, no, there were no other sales.

Q. Do you have a copy of the application before you?

A. Yes, I have.

Q. In the finance case, will you refer to Page 5, and tell me, as shown on Page 5, if the officers and directors of L. Nelson and Sons Company are the same at the present time as they were at the time the application was submitted.

A. That is correct. The present officers are the three [fol. 41] indicated on Page 5.

Q. And for the record will you give us their names and titles?

A. Charles Chilberg, president and treasurer; Clifford Nelson, secretary and assistant treasurer; and Greta C. Nelson Carlson, vice-president.

Q. Are those three the directors of the company as shown on Page 5 of the application?

A. The same three are the directors.

Q. Now, can you tell us how long those parties have been officers and directors of L. Nelson and Sons Company?

A. Ever since the estate was closed on December 31, 1952.

Q. During the pendency of the estate and after the death of Mrs. Nelson, was a president and treasurer elected?

A. No.

Q. Did the vice-president and the assistant treasurer carry on in her stead?

A. That is correct.

Q. On Page 5 of the application, under stockholders, the principal stockholders requested, and there are reflected the stockholdings of Charles Chilberg and Clifford Nelson,

does that correctly reflect the number of shares held by each at the present time?

A. That is correct.

Q. And have each of them held that number of shares, same number of shares, since the purchases from the other [fol. 42] members of the family?

A. That is right.

Q. Greta Carlson is not shown as a stockholder there, but does she hold some stock in the corporation?

A. She holds the inherited forty-two shares.

Q. And has she continued to hold them up to the present time?

A. That is right.

Q. There are six shares of stock, I believe you said, that are outstanding, that is, not reflected in the holdings of either Charles Chilberg, Clifford Nelson, or Greta Carlson?

A. Yes.

Q. How were those six shares held?

A. Six shares were purchased by the corporation and held as treasury stock by The L. Nelson and Sons.

Q. Is it still held at the present time as treasury stock?

A. That is right.

Exam. Baumgartner: May I interrupt a moment here? Did I understand that there were 500 shares of stock outstanding at one time?

The Witness: That's right, sir.

Exam. Baumgartner: And the outstanding stock today is 532 plus—just 532 plus forty-two shares?

The Witness: I'm sorry, no. It's still 500 shares. Six shares treasury stock, 226 shares to Charles Chilberg, 226 shares to Clifford Nelson, and forty-two shares to Greta [fol. 43] Nelson Carlson.

Exam. Baumgartner: Thank you.

By Miss Kelley:

Q. I don't recollect, Mr. Solomon, if I asked you what the consideration is that was paid for the original fifty shares sold by Kenneth Nelson and Oscar Herbert Chilberg?

A. Yes. It was the appraisal price, which was \$82.50 per

share. In other words, Kenneth Nelson and Oscar Chilberg sold their forty-two shares for \$3,465, respectively.

Q. Was your answer directed to the forty-two shares which they inherited from the estate, or to the original fifty shares which they held?

A. Merely to the forty-two shares held by the estate.

Q. And when you said they paid the appraised price, what did you mean by that?

A. The appraisal as listed in the federal estate inventory of Mrs. Linnea Nelson.

Q. Would it be the inventory of the estate as filed with the probate court and other instruments connected with the estate?

Mr. Joseloff: The original fifty shares was a gift, was it not, the one and the forty-nine? There was no price paid for that?

Miss Kelley: When they originally received the—

Mr. Keenan: Well, I—

Miss Kelley: Wait a minute—

Mr. Keenan: I object to counsel putting facts in the [fol. 44] record, even though my colleague asked for them. I think they should go in through a witness. I don't stipulate to them.

Miss Kelley: I believe the record is clear on the point and counsel was merely asking for clarification.

Mr. Keenan: I object to counsel for applicant—

Exam. Baumgartner: I don't recall whether the record shows the shares were a gift or consideration was paid for them.

Miss Kelley: We will clarify the point.

Exam. Baumgartner: All right. That is the fifty shares now.

By Miss Kelley:

Q. Mr. Solomon, going back to, I believe you testified, in 1949, when the four individuals: Kenneth Nelson, Clifford Nelson, Oscar Herbert Chilberg, and Charles Chilberg received the forty-nine additional shares of stock, do you know whether or not they paid consideration for those shares, or was it a gift from their mother?

A. It was a gift from their mother.

Q. Do you know what consideration Kenneth Nelson received for his fifty shares when he sold them on September 22, 1951?

A. Yes: \$5,000.

Q. And what was that based on?

A. Par value of the stock, a hundred dollars each.

Q. And do you know what the consideration was that Oscar Herbert Chilberg received?

A. Five thousand dollars.

Q. And that is when he sold them on June 30, 1951?

[fol. 45] A. That's right.

Q. Now, Mr. Solomon, do you have any financial interest at the present time, or, have you ever had any financial interest in The L. Nelson and Sons Company, or any interest other than as their public accountant?

A. None whatsoever, as far as financial interest goes.

Q. Well, no financial interest?

A. That's right.

Q. Do you have any interest in The L. Nelson and Sons Company other than as their public accountant?

A. Only as public accountant.

Q. To your knowledge, since the sale of the stock in 1951 and the transfer and completion of the transaction involving the stock inherited from their mother, have Kenneth Nelson or Oscar Herbert Chilberg had any interest, a financial interest, in the L. Nelson and Sons Company; and in answering that, would you include the other members of the family who sold their stock, too?

A. On the—

Mr. Keenan: Could I hear the question, if the Examiner please.

Miss Kelley: May I revise the question:

Q. To your knowledge, have Oscar Herbert Chilberg or Kenneth Nelson or the other members of the family who sold the stock inherited from their mother had any financial [fol. 46] interest in the L. Nelson and Sons Company?

A. None.

Miss Kelley: Is that question clear on the record? I was wondering if you think that question is clear on the record?

Exam. Baumgartner: I think so.

Q. How frequently do you confer with representatives of The L. Nelson and Sons Company, or are you at their place of business?

A. An average of three to five days per month.

Q. Who do you consult with in an official capacity?

A. Charles Chilberg.

Q. Will you tell us generally what you do for the company?

A. I supervise the books and records, supervise or prepare all tax returns, income and excise and federal taxes; and give recommendations on financial matters to Charles Chilberg.

Q. As their accountant do you attend stockholders and directors meetings?

A. On occasion, I do.

Q. Are the annual reports and other reports filed with the Interstate Commerce Commission by L. Nelson made up under your direction or by you?

A. They are prepared by me, yes.

Exam. Baumgartner: You are referring to the annual reports filed with the ICC?

Miss Kelley: Yes.

[fol. 47] The Witness: ICC annual reports.

Exam. Baumgartner: The quarterly, too?

The Witness: Yes, sir.

By Miss Kelley:

Q. Were the financial statements attached to the application filed in behalf of The L. Nelson and Sons Transportation Company, being Exhibits A-5, A-7(1), -(2), and -(3) prepared by you? They are at the first of the book, Mr. Solomon.

A. I prepared those statements as you enumerated.

Exam. Baumgartner: For the purpose of the record: Exhibit A-5 to the application is entitled "Balance Sheet,

May 31, 1955." Exhibit A-7(1) is entitled "Operating Statement, January 1, 1955, and May 31, 1955." Exhibit A-7(a) is entitled "Operating Statement, January 1, 1954, to December 31, 1954." Exhibit A-7 (3) is entitled "Income Statement, January 1, 1953, to December 31, 1953." All of which pertain to The L. Nelson and Sons Transportation Company.

[fol. 50] Q. Mr. Solomon, when did you first learn of the Gilbertville Trucking Company?

A. In January of 1953.

Q. And what was the occasion of your hearing of that company: Gilbertville Trucking Company?

A. I was requested to determine the feasibility, by Kenneth Nelson, to purchase, just how to arrange for the purchase of Gilbertville Trucking Company, Incorporated.

Q. And what proposals were under consideration with respect to this purchase?

A. Whether to purchase the assets or the capital stock.

Q. And did you advise Kenneth Nelson in connection with that matter?

A. Was I—will you repeat that question?

Q. Did you advise him in connection with the matter as—

A. I did.

Q. And what advice did you give him with respect to the purchase of the company, whether to purchase the stock or the assets?

A. To purchase the stock of Gilbertville Trucking Company.

Q. And why did you make a recommendation they purchase the stock?

[fol. 51] A. The corporation had a net operating loss that would be of value, should the corporation make any profits in the future, towards their income taxes.

Exam. Baumgartner: Federal income taxes?

The Witness: Federal income taxes.

Q. Now, whom did you consult with reference to the acquisition of the stock of the Gilbertville Trucking Company?

A. With Kenneth Nelson.

Q. Were you involved in any consultations with attorneys?

A. Yes.

Q. In connection with the purchase of the Gilbertville Trucking Company?

A. Yes.

Q. And can you tell us—not necessarily the names—but who did the attorneys represent?

A. Yes. Arthur Paroshinsky—p-a-r-o-s-h-i-n-s-k-y—of Springfield, Massachusetts, represented Kenneth Nelson; Attorney Arthur Zandan—z-a-n-d-a-n—of Springfield, Massachusetts, represented the stockholder, Mr. Vachon—v-a-c-h-o-n—and—

Q. He was a stockholder of what company?

A. Of Gilbertville Trucking Company.

Q. Were other persons consulted or involved in that purchase? Any other person?

Exam. Baumgartner: Just a minute. Had you completed your answer concerning the attorneys?

The Witness: Yes, sir.

Exam. Baumgartner: Excuse me. I thought he had some more to add to it.

Miss Kelley: I began to wonder myself.

By Miss Kelley:

Q. Were other persons consulted or involved in that purchase?

A. The then accountant for Gilbertville Trucking Company, Francis J. Mahoney—m-a-h-o-n-e-y.

Q. Do you have knowledge as to when Kenneth Nelson purchased the stock of the Gilbertville Trucking Company?

A. Yes. He purchased the stock effective March 1, 1953.

Q. How many shares of stock were held by the Gilbertville Trucking Company at that time?

A. A hundred shares, common capital stock, par value one dollar per share.

Exam. Baumgartner: Pardon me. This is Gilbertville stock you are speaking of?

Miss Kelley: Yes.

Mr. Williams: Pardon me, was that one dollar per share or one thousand?

The Witness: One dollar per share, a hundred shares of capital stock.

By Miss Kelley:

Q. Mr. Solomon, do you have personal knowledge as to the terms and conditions under which the stock of Gilbert-[fol. 53]ville Trucking Company was purchased by Kenneth Nelson and the consideration paid for it?

A. Yes, I do.

Q. Would you tell us that?

Mr. Keenan: If the Examiner please, could we hear what the source of the witness' personal knowledge is, unless, of course, he is testifying about events which he personally observed.

Exam. Baumgartner: Will you do that, Miss Kelley.

Q. Will you tell us the source of your information, Mr. Solomon?

A. The source?

Q. Yes. How did you acquire your knowledge with respect to—

A. I was—

Q. —to those matters?

A. I was going to read it from the purchase agreement. I was assigned by Kenneth Nelson.

Q. To do what?

A. In the transaction the purchase price was \$35,000 plus the corporation's cash, accounts receivable and pre-paid items less any liabilities as of February 28, 1956.

Mr. Keenan: Mr. Examiner, I don't believe the witness is answering Miss Kelley's question.

Exam. Baumgartner: I don't think that answer is quite responsive.

By Miss Kelley:

Q. Mr. Solomon, will you first tell us what your part was in connection with Kenneth Nelson purchasing the stock

[fol. 54] of Gilbertville Trucking Company, and I believe you have said that you were consulted as to whether he would buy the assets or he would buy the stock; and will you explain how you participated in the transaction?

A. Yes.

Q. Were you involved in the drawing up of the agreement, and so forth and so on, so that you can be qualified to answer further questions.

A. I did not have anything to do with the drawing up of the agreement. I did participate in order to determine the liabilities and the assets of the corporation.

Q. Were you present during conferences between the two attorneys that you previously testified about and Mr. Mahoney the accountant, who was the accountant for Gilbertville at that time?

A. I did visit the accountant, Mr. Mahoney, at his office in order to determine the assets and liabilities of the corporation.

Q. Did you have knowledge of the terms of the agreement simultaneously with it being executed?

A. I did.

Q. Were you involved in all facts and details in connection with that purchase?

Mr. Keenan: Mr. Examiner, I am not sure that question is entirely clear—

Miss Kelley: Let me withdraw—

Mr. Keenan: Excuse me. I don't think counsel should [fol. 55] lead in that manner in such an issue.

Exam. Baumgartner: Well, it's more or less of a preliminary question.

Mr. Keenan: I agree, sir. I do repeat my request: We still haven't learned what the source of the witness' information is.

Exam. Baumgartner: I think he is trying to explain. May I interject a question or two at this point?

Miss Kelley: I would be happy if you would.

Exam. Baumgartner: Mr. Solomon, did you participate in conferences in which these transactions were discussed?

The Witness: I did.

Exam. Baumgartner: And did you at those conferences

FACTS AND CIRCUMSTANCES WHICH
APPLICANTS RELY UPON TO WARRANT
APPROVAL OF THE PROPOSED TRANSACTION

Attach to original and each copy of this application the following exhibits, identifying each as indicated:

D—1. To explain and support the reasonableness of the consideration involved in the proposed transaction.

D—2. To show the effect of the proposed transaction upon adequate transportation service to the public.

D—3. To establish that the increase, if any, of total fixed charges resulting from the proposed transaction would not be contrary to the public interest.

D—4. To establish that any guaranty or assumption of payment of dividends or fixed charges contemplated in the transaction is not inconsistent with the public interest.

D—5. To show the effect of the transaction on the interests of the carrier employees affected.

D—6. To establish that the transaction will be consistent with the public interest.

If transferee is a carrier by railroad subject to part I of the Interstate Commerce Act, or a person which is controlled by such a carrier, or affiliated therewith—

D—7. To show that the proposed transaction will enable such carrier by railroad to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

If the proposed transaction would result in dual operations, or the extension of such operations by transferee, or by transferee and any person controlling, controlled by, or under common control with transferee—

D—8. To show that both a certificate and a permit may be so held consistently with the public interest and with the national transportation policy.

[fol. 382]

CERTIFICATE OF SERVICE

I, Mary E. Kelley DO HEREBY CERTIFY that upon the 5th day of October, 1955, a copy of the application of The L. Nelson & Sons Transportation Company for authority under section 5 of the Interstate Commerce Act to Merge the operating rights and property of Gilbertville Trucking Co., Inc. was delivered, in person or by registered or receipted mail, to each of the following Boards, Commissions, or officials having authority to regulate the business of transportation by motor vehicle (or the Governor where there is no Board, Commission, or official) of the States in which the applicants or the carriers involved in the application operate:

I further certify that I have made diligent inquiries to determine the names of all competitors, and that a notice of the filing of this application, Form BMC-15A, was delivered, in person or by registered or receipted mail, to the following carriers by motor vehicle, rail, or water, known to the applicants, with whose service the operations described in this application, including the proposed unified operations, are or will be directly competitive: (Applicants should make diligent inquiries, including among other places, the appropriate field offices of the Commission's Bureau of Motor Carriers, to determine the name of every motor carrier, railroad, or water carrier with whose service the operations described in this application are or will be competitive.)

Name of State Board

Address

New Hampshire Public Service Commission,

Mass. Department of Public Utilities,

Concord, N. H.

100 Nashua St.,

Boston, Mass.

R. I. Department of Business

**Regulations,
Conn. Public Utilities Commission,
New York Public Service Commission,
N. J. Board of Public Utilities**

**Commissioners,
Pa. Public Utilities Commission,
Del. Public Service Commission
Va. State Corporation Commission,
Md. Public Service Commission,
D. C. Public Utilities Commission,
Vt. Public Service Commission,**

**Providence, R. I.
Hartford, Conn.
Albany, N. Y.**

**Trenton, N. J.
Harrisburg, Pa.
Dover, Delaware
Richmond, Va.
Baltimore, Md.
Washington, D. C.
Montpelier, Vt.**

(Use additional sheet or sheets if necessary)

Signed.....

(S) Mary E. Kelley

[fol. 383]

**FACTS AND CIRCUMSTANCES WHICH APPLICANT
RELIES UPON TO WARRANT APPROVAL OF
THE PROPOSED TRANSACTION.**

- D—1 This transaction involves the merger of all the properties of the two motor carriers involved, the stock of transferor to be exchanged for shares of transferee having equal value, based on the net value of the stock of each respective company at the time of consummation. It is the belief of the parties that the consideration here involved is fair and equitable.
- D—2 The merger of all the properties of Nelson and Gilbertville will permit the rendition of a more flexible service and greater utilization of equipment, all of which will result in an improved and more economical service being made available to the public utilizing the transportation services of transferee and transferor.
- D—3 This transaction will not result in any increase in the fixed charges of Nelson, the surviving carrier.
- D—4 There is no guaranty or assumption of payment of dividends or fixed charges contemplated in this transaction.

- D—5 It is not anticipated that this transaction will affect the employees of either transferee or transferor.
- D—6 Nelson, under authority granted in Certificate No. MC 42871, is authorized to transport textile products. There has been a trend in the textile business to relocate plants in the south, which trend has resulted in unbalanced loading for Nelson. Gilbertville and Nelson operate in substantially the same areas; trucks of both companies are dispatched daily to the same general areas. The merger of the properties will result in the elimination of wasteful transportation, will permit greater utilization of equipment and manpower, and result in many economies, all of which will result in a more efficient and economical operation.

[fol. 384]

BEFORE THE INTERSTATE COMMERCE
COMMISSION

ORDER—December 20, 1955

At a Session of the INTERSTATE COMMERCE COMMISSION, division 4, held at its office in Washington, D. C., on the 20th day of December, A. D. 1955.

No. MC-F-6178

THE L. NELSON AND SONS TRANSPORTATION
COMPANY—INVESTIGATION OF CONTROL—
GILBERTVILLE TRUCKING CO., INC.

It appearing, That The L. Nelson and Sons Transportation Company, of Ellington, Connecticut, and Gilbertville Trucking Co., Inc., of Gilbertville, Massachusetts, are motor carriers subject to the Interstate Commerce Act, and

It appearing, That control or management of Gilbertville Trucking Co., Inc., in a common interest with The L. Nelson and Sons Transportation Company, may have been effectuated and may be continuing in violation of Section 5(4) of the said Act, and that the persons hereinafter named as respondents may have effectuated or participated in effectuating such common control or management.

It is ordered, That an investigation on the Commission's own motion be, and it is hereby, instituted for the purpose of inquiring into and concerning said possible violations, and all matters connected therewith or related thereto, as provided in Section 5(7) of the said Act, and, if such violations are found, to enter an order requiring any person participating therein to take such action as may be necessary to prevent further violations of said provisions;

It is further ordered, That The L. Nelson and Sons Transportation Company, Ellington, Connecticut, Gilbertville Trucking Co., Inc., Gilbertville, Massachusetts, Charles G. Chilberg, Rockville, Connecticut, Clifford J. O. Nelson, Dover, Massachusetts, Greta C. Carlson, Rockville, Connecticut, and Kenneth A. H. Nelson, Ellington, Connecticut, be, and they are hereby, made respondents in this proceeding;

It is further ordered, That this matter be assigned for hearing concurrently with hearing in The L. Nelson and Sons Transportation Company—Control and Merger—Gilbertville Trucking Co., Inc., Docket No. MC-F-6099, at a time and place to be fixed, and that the two proceedings be heard and determined on a joint record;

It is further ordered, That the Bureau of Inquiry and Compliance shall give timely notice to the respondents prior to the hearing to be held herein with respect to the particular matters indicating possible unlawful control or management as to which the Bureau will submit evidence at the hearing; and

It is further ordered, That a copy of this order be served upon each of said respondents, and that notice of this proceeding be given to the public by posting a copy of this order in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 4.

(SEAL)

HAROLD D. MCCOY,
Secretary.

[fol. 1]

BEFORE THE INTERSTATE COMMERCE COMMISSION
Docket No. MC-F-6099

In the matter of

THE L. NELSON & SONS TRANSPORTATION CO.—CONTROL
AND MERGER—GILBERTVILLE TRUCKING CO., INC.

Docket No. MC-F-6178

In the matter of

THE L. NELSON & SONS TRANSPORTATION COMPANY—INVESTIGATION OF CONTROL—GILBERTVILLE TRUCKING CO., INC.

Transcript of Hearing

Courtroom No. 4
Federal Building
Boston, Massachusetts
Monday, September 17, 1956

Met, pursuant to notice, 9:30 a.m.

Before: WALTER L. BAUMGARTNER, Examiner.

APPEARANCES:

Mary E. Kelley, 84 State Street, Boston 9, Massachusetts, appearing for applicant.

Herman F. Mueller, 824 New Post Office Building, Boston, Massachusetts, Bureau of Inquiry and Compliance, Interstate Commerce Commission.

James G. Lane, 226 South Station, Boston, Massachusetts, Eastern Railroads as intervenor in opposition in MC-F-6099, intervenor in support of ICC position in MC-F-6178.
[fol. 2]

Kenneth B. Williams, 89 State Street, Boston 9, Massachusetts, Alvin R. Holmes, d/b/a Holmes Transportation Service and/or Jones Express, Taylor's Express Co., New-

burgh Transfer, Inc., and P. B. Mutrie Motor Transportation, Inc., intervenors in opposition in MC-F-6099 and intervenors in support of the Interstate Commerce Commission in MC-F-6178.

Francis E. Barrett, Jr., 7 Water Street, Boston 9, Massachusetts, Adley Express Company, M & M Transportation Co., and Hemingway Brothers Interstate Trucking Co., Inc., protestants.

Hugh M. Joseloff, 410 Asylum Street, Hartford 3, Connecticut, H. T. Smith Express Co., Downing & Perkins, Lombard Bros., Inc., National Transportation Co., protestants in MC-F-6099, intervenors in opposition in MC-F-6178.

William Q. Keenan, 54 Meadow Street, New Haven, Connecticut, Eastern Territory Railroads, intervenors in opposition in MC-F-6099, and intervenors in support of Bureau of Enforcement in MC-F-6178.

Arthur J. Piken, 160-16 Jamaica Avenue, Jamaica 32, New York, Westchester Motor Lines, Inc., and Jackson Transportation Corp., protestants.

[fol. 27] SANOL J. SOLOMON was sworn and testified as follows:

Direct examination.

By Miss Kelley:

Q. May we have your name, business address, and occupation?

A. Sanol—s-a-n-o-l—J. Solomon—s-o-l-o-m-o-n—63 East [fol. 28] Center Street, Manchester, Connecticut, public accountant.

Q. And how long have you been a public accountant, Mr. Solomon?

A. Twenty-seven years.

Q. And are you employed as an accountant by The L. Nelson and Sons Transportation Company?

A. Yes.

Q. And how long have you been employed as their accountant?

A. January of 1949.

Q. Was the business of L. Nelson and Sons incorporated at the time of your employment?

A. Yes, it was.

Q. In the course of your employment, and since the time that you were first employed by the company as a public accountant, are you aware of the names of the officers and directors and stockholders of The L. Nelson and Sons Company?

A. Yes.

Q. Would you tell us who were the officers, directors, and stockholders when you first became connected with the company?

A. Linnea Nelson, president and treasurer—

Mr. Keenan: Could we hear the first name spelled?

The Witness: Linnea—l-i-n-n-e-a—Nelson, president and treasurer; Oscar Herbert Chilberg, vice-president; Charles—

Mr. Keenan: Could we hear the last name spelled?

The Witness: Chilberg—c-h-i-l-b-e-r-g.

Mr. Keenan: What was Chilberg?

[fol. 29] The Witness: Oscar Herbert.

Mr. Keenan: I didn't hear the office, if the Examiner please.

The Witness: Again, vice-president, Charles Chilberg, assistant treasurer, Clifford Nelson—I'm sorry, it's Kenneth Nelson who is assistant treasurer.

Exam. Baumgartner: What is that first name?

The Witness: Kenneth Nelson—k-e-n-n-e-t-h—and the secretary is Clifford Nelson.

By Miss Kelley:

Q. How is—

Mr. Keenan: Mr. Examiner, for clarification, could I inquire whether the witness is now giving us the officers as of January, 1949?

Miss Kelley: Yes. That was the question.

The Witness: That's right.

By Miss Kelley:

Q. How was the stock held at that time: January, 1949?

A. There were 500 shares of outstanding common stock with Linnea Nelson holding 496 shares; Kenneth Nelson, one share, Clifford Nelson, one share; Charles Chilberg, one share; and Oscar Chilberg, one share.

Exam. Baumgartner: Who held the 496?

The Witness: Four-ninety-six, Linnea Nelson.

By Miss Kelley:

Q. At some time later was there some change in the number of shares held by Kenneth Nelson, Clifford Nelson, Charles Chilberg, and Oscar Chilberg?

[fol. 30] A. Yes. Linnea Nelson became deceased on January 5, 1950.

Q. Well, prior to her death on January 5, 1950, had the stockholdings of the company, the stockholders of the company, remained the same as they were in January of 1949? That is, 496 shares to her?

A. No. During 1950 Linnea Nelson gave forty-nine additional shares to each of the four who had shares before, meaning, Kenneth Nelson, from his one share, he secured an additional forty-nine to make fifty; Clifford Nelson, forty-nine additional shares; Charles Chilberg, forty-nine additional shares; and Oscar Chilberg, forty-nine additional shares. Linnea remained holding 300 shares.

Exam. Baumgartner: When did that occur?

The Witness: In 1950.

Q. Well, did I understand you to say that Mrs. Nelson died on January 5, 1950?

A. I'm sorry. It was in 1949 that Mrs. Linnea Nelson gave the shares, that's right.

Exam. Baumgartner: It was during 1949?

The Witness: During 1949.

Q. For clarification in the record, what relation were Oscar Chilberg and Charles Chilberg to Mrs. Nelson?

A. They are sons of a first marriage.

Q. So that—

Mr. Keenan: Excuse me. For clarification, when counsel [fol. 31] set refers to Mrs. Nelson, is counsel referring to Linnea Nelson?

Miss Kelley: That is the only Mrs. Nelson who is in the picture at this time.

By Miss Kelley:

Q. And Oscar Chilberg and Charles Chilberg are half brothers of Kenneth Nelson and Clifford Nelson?

A. That is right.

Q. Are you familiar, because of your employment as accountant, with the terms of Mrs. Nelson's will?

A. I am.

Q. And under her will how was her property, and specifically the stock of The L. Nelson and Sons Company, distributed?

A. Yes. At the time of Mrs. Nelson's decease on January 5, 1950, she held 300 shares and each of her seven children were left forty-two shares, making a total of 294 shares. The remaining six shares were held as treasury stock by the corporation.

Mr. Keenan: Remaining six?

The Witness: Remaining six shares were purchased by the corporation.

By Miss Kelley:

Q. Now, after her death and while the estate was being administered, who held that stock?

A. Yes.

Q. The 300 shares?

A. Yes. Forty-two shares were held by Oscar Chilberg, forty-two shares by Charles Chilberg, forty-two shares by [fol. 32] Howard Chilberg, forty-two shares by Ruth Widham.

Exam. Baumgartner: Ruth—

The Witness: Ruth Nelson Widham.

Mr. Keenan: I'm sorry. I didn't hear that last word: widow?

The Witness: Widham—w-i-d-h-a-m.

By Miss Kelley:

Q. Was the stock of the corporation immediately distributed to the heirs upon the death of Mrs. Nelson?

A. Not until the close of the estate: December 31, 1952. Then there was a process before it was distributed to each of the seven children, which took place January 24.

Q. I believe you misunderstood my previous question. During the period between her death and the closing of the estate, how was that stock held and voted?

A. Yes. The stock was held by the estate and it was voted—there were three executors: Charles Chilberg, Oscar Chilberg, and Ruth Nelson Widham, with Charles Chilberg doing the voting for the stock that was held by the estate.

Q. By proxy?

A. By proxy of the others, the other two executors.

Q. Now, at some time was there a change in the stock-holdings?

A. Yes. On June 30, 1951, the original fifty shares held by Oscar Chilberg was sold.

Q. Who was that sold to?

A. Charles Chilberg.

Q. Thereafter was—

[fol. 33] A. Oh, I'm sorry. Your question goes on further, does it?

Q. Well—

A. You want to know all the persons who sold stock?

Q. Yes. Would you give us all at this time?

A. I'm sorry. Kenneth Nelson on September 22, 1951, sold his original fifty shares to Clifford Nelson.

Q. So at that time were the estate and Clifford Nelson and Charles Chilberg the stockholders of L. Nelson and Sons?

A. The estate, Charles Chilberg, and Clifford Nelson is correct.

Mr. Keenan: Excuse me, if the Examiner please. Counsel said "at that time." I don't know what time is being referred to.

The Witness: The time would be in 1951.

Mr. Keenan: Could I hear the question and his answer, if the Examiner please?

Exam. Baumgartner: Miss Reporter, will you read the question and answer.

[Question and answer read by the reporter as follows:

"Q. So at that time were the estate and Clifford Nelson and Charles Chilberg the stockholders of L. Nelson and Sons? A. The estate, Charles Chilberg, and Clifford Nelson is correct."] The record was also read through Line 13.]

Mr. Keenan: Well, for clarification, Mr. Examiner, could I inquire what time during 1951 is referred to?

Miss Kelley: If you will be patient I will try and develop [fol. 33a] it.

Mr. Keenan: Withdraw the request.

By Miss Kelley:

Q. I believe you testified that the original fifty shares of Oscar Chilberg was sold on July 30, 1951, and the original fifty shares of Kenneth Nelson was sold on September 22, 1951. Was that the period that you were testifying to in answer to my previous question as to the estate and the two remaining stockholders?

A. That's right.

Mr. Williams: Pardon me, Mr. Examiner. I think you said July once and June once. I don't know which is which.

Miss Kelley: July 30 is what I meant.

Mr. Williams: He stated—

By Miss Kelley:

Q. Are the correct dates for the sale of the original fifty shares: July 30, 1951, and September 22, 1951?

A. That is correct.

Exam. Baumgartner: July 30, 1951, instead of June 30, 1951?

The Witness: It's June 30 of 1951. Didn't you say June 30?

not be modified or amended except by a further agreement in writing signed by all of the parties.

8. This agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, successors or assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in triplicate as of the day and year first above written.

.....
KENNETH NELSON

GILBERTVILLE TRUCKING CO., INC.

By
Kenneth Nelson, Pres. & Treas.

THE L. NELSON & SONS TRANSPORTATION COMPANY

By
Charles G. Chalberg, Pres. & Treas.

[fol. 376]

APPENDIX TO EXHIBIT "C-1"

Basis of Determining Valuation and Issuance of Nelson Stock in Exchange for Gilbertville Stock

<u>Capital Stock Distribution:</u>	<u>Original Net Worth Shares as of Issued May 31, 1955</u>	<u>% of Conso- lidated Net Worth</u>	<u>Prior to Con- solidation val- uation per share.</u>	<u>Value per share after issuing 85 shares of Nelson Stock for 100 sh. of Gilbertville.</u>	<u>Valuation of all out- standing shares after merger.</u>	
The L. Nelson & Sons	500	\$151,737.15	85.55%	\$303.47	500 shares - \$303.188	\$151,594.11
Gilbertville	100	\$ 25,627.94	14.45%	\$256.23	85 shares - \$303.188	\$ 25,770.98
		<u>\$177,365.09</u>	<u>100%</u>			<u>\$177,365.09</u>

GILBERTVILLE TRUCKING COMPANY, INCORPORATED
STATEMENT OF LEDGER VALUE FOR ALL PROPERTY
AS OF MAY 31, 1955.

Revenue Equipment, Trucks, Tractors, Trailers (Schedule Below)	\$68,937.31		
Res. for Depreciation	<u>21,301.73</u>	\$47,635.58	
Furniture & Office Equipment	1,969.31		
Res. for Depreciation	<u>76.09</u>	1,893.22	
Service Cars	1,222.21		
Res. for Depreciation	<u>432.82</u>	789.39	
TOTAL ALL PROPERTY			\$50,318.19

Segregation of Revenue Equipment:

<u>Trucks:</u> International-straight (4)	5,117.00		
Reserve for Depr.	<u>519.40</u>		4,597.60

<u>Tractors:</u> Mack -1945 (1)	7,000.00		
Reserve for Depr.	<u>7,000.00</u>	None	
International-Used -			
1948 & 1949 (4)	800.00		
Reserve for Depr.	<u>116.76</u>	683.24 ^b	
International-New-1955 (3)	19130.77		
	<u>1100.72</u>	18030.05	18,713.29

<u>Trailers:</u> Strick-New-1953 (7)	33250.00		
Reserve for Depr.	<u>11544.65</u>	21705.35	
Fruehauf-new-1953 (1)	3639.54		
Reserve for Depr.	<u>1020.20</u>	2619.34	24,324.69

TOTAL LEDGER VALUE OF REVENUE EQUIPMENT			<u>47,635.58</u>
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Miscellaneous Equipment

Service Car-Chevrolet-1953	1222.21		
Reserve for Depr.	<u>432.82</u>	789.39	

GILBERTVILLE TRUCKING COMPANY, INCORPORATED.
ENCUMBERED PROPERTY AS OF
MAY 31, 1955

<u>Encumbered Property</u>	<u>Financed By</u>	<u>Rate per month for 24 months</u>	<u>Finance Charge</u>	<u>Date Issued</u>	<u>Maturity Date</u>
Int. Tractor #17	*Int. Harv. Cr. Corp.	\$234.90	\$337.60	2/1/55	1/1/57
Int. Tractor #18	* " " " " "	221.60	318.40	2/1/55	2/1/57
Int. Tractor #19	* " " " " "	197.88	436.40	4/3/55	10/15/57
Strick Trailers #110, 111, 112	*Phila., Pa., 1st Nat'l. Bank	447.80	560.28	7/24/53	6/24/55
Strick Trailers #114, 115, 116, 117	* " " " " "	723.32	896.50	10/3/53	9/3/55
Int. Straight Trucks #3, 4	*Int. Harv. Cr. Corp.	221.60	318.40	2/15/55	1/15/57

* * * * *

<u>Encumbered Property</u>	<u>Original Face Value</u>	<u>Balance due May 31, 1955</u>
Int. Tractor #17	\$5,637.60	\$4,463.10
Int. Tractor #18	5,318.40	4,432.00
Int. Tractor #19	5,936.40	5,738.52
Strick Trailer #110, 111, 112	10,747.20	447.80
Strick Trailer #114, 115, 116, 117	17,359.68	2,169.96
Int. Straight Trucks # 3, 4	5,318.40	4,432.00
		<u>\$21,683.38</u>

*All Encumbered Evidenced By Conditional Sales Contract.

Int. -- means International.

[fol. 378]

EXHIBIT C-3 TO EXHIBIT "C"

THE L. NELSON AND SONS TRANSPORTATION COMPANY
(INCLUDING GILBERTVILLE TRUCKING COMPANY, INCORPORATED)
CONSOLIDATED "GIVING EFFECT" BALANCE SHEET AS OF MAY 31, 1955.

[fol. 379]

176

EXHIBIT C-5970 EXHIBIT "C"

Current Assets:

Cash	3,319.46	
Accounts Receivable - Customers	189,115.68	
Accounts Receivable - Others	7,672.49	
Prepaid Insurance, interest, tires, tubes, rent	34,520.28	
Total Current Assets.	<u>234,627.91</u>	

Tangible Property:

Carrier, Operating Prop.	585,891.32	
Res. for Depr. & Amort.	<u>266,931.35</u>	318,959.97

Intangible Property:

Organization	741.37	
Res. for Amortization	<u>591.37</u>	150.00
Franchises	13,060.61	
Res. for Amortization	<u>6,810.61</u>	6,250.00

TOTAL ASSETS

\$559,987.88

Current Liabilities:

Accounts Payable	145,182.88	
Wages Payable	3,502.52	
Taxes Accrued	<u>29,923.97</u>	178,609.37

Advances Payable:

Notes Payable - Officers		3,728.43
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Equipment Obligations:

Notes Payable - Equipment		159,691.57
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Reserves:

Injuries, Loss & Damage Reserve	3,897.89	
State & Fed. Corp. Income Taxes	<u>17,295.13</u>	21,193.02

Capital Stock:

Common Capital Stock (585 Shares)	* 58,500.00	
Less: Reacquired Securities	<u>600.00</u>	57,900.00

Unappropriated Surplus:

Unearned Surplus	**25,403.61	
Earned Surplus	<u>62,484.38</u>	87,887.99
Net Profit for 5 months after deducting Corporation Income Taxes:		

Reserves:

Injuries, Loss & Damage Reserve
State & Fed. Corp. Income Taxes

3,897.89
17,295.13 21,193.02

Capital Stock:

Common Capital Stock (585 Shares)
Less: Reacquired Securities

* 58,500.00
600.00 57,900.00

Unappropriated Surplus:

Unearned Surplus
Earned Surplus
Net Profit for 5 months after deducting
Corporation Income Taxes:

**25,403.61
62,484.38 87,887.99

The L. Nelson and Sons
Gilbertville Trucking Co., Inc.

21,785.54
9,191.56 30,977.10

TOTAL LIABILITIES & CAPITAL

\$559,987.88

Consolidated "Giving Effect" Balance sheet based on Nelson Exhibit A-5
and Gilbertville Exhibit B-4 respectively.

*Capital Stock Distribution:

The L. Nelson-Net Worth-May 31, 1955
Gilbertville-Net Worth-May 31, 1955
Consolidated Net Worth-May 31, 1955

151,737.15 - 85.55%
25,627.94 - 14.45%
177,365.09 - 100%

The L. Nelson-Capital Stock Outstanding
Gilbertville - Orig. Capital Stock

50,000.00 85.47%

Exhibit B-4 100.00

Plus From Unearned Surplus 8,400.00

8,500.00 14.53%

Adjusted Capital Stock Outstanding

*\$58,500.00 100

*Unearned Surplus (or Paid In Surplus)

The L. Nelson Exhibit A-5
Gilbertville - Exhibit B-4 32,966.23

837.38

Less Adjustment to

Capital Stock 8,400.00

24,566.23

Consolidated Unearned Surplus

**25,403.61

THE L. NELSON AND SONS TRANSPORTATION COMPANY AND
GILBERTVILLE TRUCKING COMPANY CONSOLIDATED "GIVING
EFFECT" OPERATING STATEMENT FROM JANUARY 1, 1955 to
MAY 31, 1955.

	Actual <u>Consolidated Operations</u>	"Giving Effect" <u>Merger Operations</u>
Revenue:		
Operating Freight Rev.	\$642,474.00	642,474.00
Operation & Mainten. Exp.:		
Equip. & Mainten.	\$74,665.55	68,931.49
Transportation	230,855.02	221,075.44
Terminal	126,154.04	121,293.06
Traffic	5,435.76	5,435.76
Insurance & Safety	31,906.93	30,021.96
Admin. & General	46,459.44	41,508.82
Total Operation & Mainten. Exp.	515,476.74	488,266.53
Other Expenses:		
Depreciation Expense	36,874.10	36,874.10
Depr. Adjustment (Gain)	(2,328.96)	(2,328.96)
Amort. Chargeable to Operations	625.00	625.00
Operating Taxes & Licenses	38,726.84	70,718.26
	<u>73,896.98</u>	<u>35,548.12</u>
	<u>589,373.72</u>	<u>558,984.79</u>
Net Operating Revenue	58,100.28	83,489.21
Other Deductions:	5,184.77	5,184.77
Net Income Before Income Taxes	47,915.51	78,304.44
Income Taxes	20,247.00	36,345.89
NET INCOME	\$27,668.51	\$41,958.55

"EXHIBIT C-8 OMITTED"

(Esso Standard Oil Co. map of Northeast
United States with routes indicated of
The L. Nelson & Sons Transportation Co.
and Gilbertville Trucking Co., Inc.)

[Vol. 380]

EXC

Exam. Baumbartner: What date was that, Mr. Solomon?

The Witness: July 24, 1953.

Q. After the stock transfer were the new officers and directors of Gilbertville elected?

A. Right at that time the new officers were elected.

Q. Did something with respect to this transfer that we are now discussing occur on March 1, 1953, Mr. Solomon?

A. Yes, sir.

[fol. 161] Q. What was that?

A. That is the date Kenneth Nelson took over the operation of Gilbertville.

Q. Then he took the operation over before he purchased it, is that correct?

A. No. He deposited escrow funds at that time, on March 3, 1953, I believe.

Q. Well, now, on direct yesterday you said that subsequently there was a shifting of the stock ownership in Gilbertville. What is the source of your knowledge as to these stock shifts?

A. The stock shifts: from the stock transfer book only and the minute book of the corporation.

Exam. Baumgartner: Of which: Gilbertville, you are talking about?

The Witness: Yes.

By Mr. Mueller:

Q. I believe you said that as of January 19, 1954, fifty-one shares in Gilbertville went to Kenneth A. H. Nelson?

A. I believe I stated that the forty-eight shares held by Oscar Herbert Chilberg went to Kenneth Nelson.

Q. So that, as of January 19, 1954, how many shares did Kenneth A. H. Nelson hold?

A. First I would like to correct the date. Instead of January, which I did say yesterday—which would be the approximate date—the exact date is April 1, 1954.

[fol. 162] Mr. Keenan: Exact date for what?

The Witness: For the transfer of the stock from Oscar Herbert Chilberg to Kenneth Nelson.

Q. What—

A. Transfer of the stock.

Q. What date?

A. April 1, 1954. I found that in the minute book last night, of Gilbertville.

Miss Kelley: If you recall, Mr. Examiner, yesterday I volunteered a date. It was rechecked last night and it seems that my notes were in error, and this is merely the correction.

By Mr. Mueller:

Q. So that after April 1, 1954, how many shares did Kenneth Nelson hold?

A. He held fifty-one shares. Phyllis Nelson, his wife, had twenty-four shares. John—

Mr. Keenan: Would you hold up for just one minute now?

The Witness: Yes.

Mr. Keenan: So that I can—Kenneth Nelson—go ahead.

The Witness: Fifty-one shares; his wife, Phyllis Nelson, twenty-four shares; John Kashady—k-a-s-h-a-d-y—twenty-four shares; and one share to Arthur Paroshinsky—p-a-r-o-s-h-i-n-s-k-y.

By Mr. Mueller:

Q. Do you know what consideration was paid by John Kashady for the stock which stands in his name?

A. Nothing at all did he pay for it.

[fol. 163] Q. May we have that answer again?

A. John Kashady did not pay anything for his twenty-four shares of stock.

Q. It was a gift?

A. Yes, to lend prestige to his job as supervisor.

Exam. Baumgartner: What was the purpose?

The Witness: To lend prestige to his job as supervisor of the terminal.

By Mr. Mueller:

Q. Have you ever seen the stock certificate in the name of Kashady?

A. I don't think I have.

Q. You don't know whether he ever had possession of the stock certificate?

A. That is right: I wouldn't know.

[fol. 165] By Mr. Mueller:

Q. Well, please tell us what equipment, repair facilities the Gilbertville Trucking Company has?

Miss Kelley: Mr. Examiner, I object to that on the ground that I don't believe the complete information would be within the knowledge of Mr. Solomon.

Exam. Baumgartner: Well, if he doesn't know he can say so. That is up to him.

[fol. 166] The Witness: Well, I do know equipment is repaired at various places.

By Mr. Mueller:

Q. By whom?

A. By various independent contractors.

Q. Have they any mechanics, has Gilbertville any mechanics, on its payroll?

A. Yes. In New York City they have a mechanic on the payroll.

Q. We are talking about Gilbertville now.

A. Yes.

Q. Isn't it a fact, Mr. Solomon, that the repairs to the equipment of the Gilbertville Trucking Company are effectuated at the shops of The L. Nelson and Sons Transportation Company?

A. Not all the—

Q. Are some of them?

A. Some of them, yes, sir.

Q. Can you say what proportion of the expense of repair and maintenance—

A. I could not. I have never made any analysis that way, sir.

Q. Would there be any records available to show repairs to Gilbertville equipment at Nelson and Sons' garages or—

A. Sorry. There would be records available to show what has been done there, yes. Bills are made out by Nelson to—

Q. Can you tell us the general basis on which such charges are assessed against Gilbertville?

A. The labor on a bill would be inserted, that is, the time [fol. 167] of the labor, and what work was done, parts used.

Q. Would there be any element of profit to The Nelson and Sons Transportation Company in such a statement, or is this done on a cost basis?

A. I wouldn't know whether it was a profit or whether it was at cost.

Miss Kelley: Mr. Examiner, may I inquire if Mr. Solomon has any records in the hearing room with him which might refresh his recollection on that point?

The Witness: These are records, yes, available to look up.

Exam. Baumgartner: But you couldn't answer the question without consulting those records?

The Witness: Yes, sir, I could not answer that.

Exam. Baumgartner: Could not answer it?

The Witness: Could not answer it.

By Mr. Mueller:

Q. Are you acquainted with the equipment lists?

A. Yes.

Q. Or, equipment records of the Gilbertville Company?

A. Yes, sir.

Q. And also of The Nelson Company?

A. Yes, sir. May I—

[fol. 169] By Mr. Mueller:

Q. I wanted to know whether Gilbertville has in its files a complete list of the motor vehicle equipment of The L. Nelson Transportation Company?

A. I wouldn't know that.

Q. You couldn't know?

A. No, I wouldn't know.

Q. Do you know if equipment of Nelson is freely leased by Gilbertville—

Miss Kelley: I object to the characterization of the question, because the interpretation that can be placed on "freely" by one person, would be completely different than that of another. If the question is restated as to the frequency or the number of times, or something of that type, I would have no objection to it.

Exam. Baumgartner: Will you strike the word "freely"?

Mr. Mueller: I will gladly strike the word "freely."

The Witness: The equipment of Nelson is leased to Gilbertville Trucking.

By Mr. Mueller:

Q. Do you have any figures available to show the frequency with which that is done?

A. I couldn't give you the frequency. I could give you the dollar figures.

Q. Is that listed in the uniform system of accounts under [fol. 170] purchased transportation?

A. That's right, sir.

Q. Can you say as of the present time how much that amounts to?

Miss Kelley: May I ask—

Q. For a given period?

Exam. Baumgartner: Well, can you state the period in your question, Mr. Mueller?

Q. Let us take so far this year.

Miss Kelley: Mr. Mueller, are you asking for purchased transportation on the books of the Gilbertville Trucking Company?

Mr. Mueller: Of the Gilbertville Trucking Company.

The Witness: I have the answer.

Q. How much?

A. \$7,065.03 from January 1, 1956, to July 31, 1956.

Q. This is transportation purchased by Gilbertville?

A. It is the leasing of equipment, Nelson's equipment, by Gilbertville.

Exam. Baumgartner: Does it cover only equipment leased from Nelson?

The Witness: That's right, sir.

Exam. Baumgartner: And lease of no other equipment?

The Witness: That's right, sir.

By Mr. Mueller:

Q. Can you give us the converse figure, namely, purchased transportation by Nelson from Gilbertville?

[fol. 171] A. I don't think I could, because in the standard accounts it is intermingled, and to my knowledge that would be very infrequent, it would be very rare.

Q. Can we go back again to your Exhibit No. 11, Mr. Solomon, Item 4200, Transportation: \$392,578, I believe. What is included in that item?

A. Under Transportation?

Q. Yes.

A. Supervision, drivers' and helpers' wages, gasoline, oil, equipment rents, bridge and tunnel tolls, drivers' road expense. That would be it.

Q. Now, you mentioned gasoline and oil. Did you mention gasoline and oil?

A. I did.

Q. Where does Gilbertville purchase its gasoline and oil at the present time?

A. At various places.

Q. Any of it purchased from The L. Nelson and Sons Transportation Company?

A. In one place, in Newton, Massachusetts, terminal: it is purchased from there.

Q. And at no other point?

A. No other point, to my knowledge.

Q. Next let us consider Item 4300, Terminal, on Exhibit No. 11.

Exam. Baumgartner: Pardon me, Mr. Mueller, what exhibit—

[fol. 172] Mr. Mueller: Exhibit No. 11.

Exam. Baumgartner: Eleven, thank you.

By Mr. Mueller:

Q. Does that item include terminal rentals?

A. Yes, it would.

Q. Well, now, can you tell us who owns the terminal building occupied by Nelson and Gilbertville at Ellington?

A. Yes, the Bergson Company.

Q. Now, will you explain this corporation—who owns its stock?

A. Yes.

Q. Who are its directors?

Miss Kelley: This is beyond the scope of the direct examination; but, Mr. Examiner, I have no objection to it being introduced.

Exam. Baumgartner: I think it does have some connection with the direct examination.

Miss Kelley: Yes, it has.

Exam. Baumgartner: I think it does have some connection.

The Witness: Mr. Examiner, could I give the full background of this?

Exam. Baumgartner: You just answer the questions exactly as they are put to you.

Miss Kelley: Can we have the question reread?

[The question was read by the reporter as follows: "Now, will you explain this corporation—who owns its stock—who are its directors?"]

[fol. 173] Exam. Baumgartner: What he wants is the stock ownership and the names of the directors in this corporation that owns the terminal—is that right?

Mr. Mueller: That's right.

The Witness: The directors and who owns the stock: there are 490 shares of common capital stock, seventy shares held by each of the seven children.

Exam. Baumgartner: Whose children?

The Witness: Of Linnea Nelson. The names?

By Mr. Mueller:

Q. Will you name them, please?

A. Yes, sir. There is Oscar Herbert Chilberg, who is

president of the corporation; Charles Chilberg, who is vice-president and treasurer of the corporation; Clifford Nelson, who since January of this year is secretary to the corporation; Greta Nelson, who was secretary; Howard Chilberg; Kenneth Nelson; Ruth Nelson Nyberg.

Q. Is Kenneth Nelson a member of the board of directors?

A. All seven are members of the board of directors.

Q. Now, in addition to the terminal at Ellington, Connecticut, does the Bergson Company own other terminals—

A. Yes, they—

Q. —used by Gilbertville and Nelson?

A. Yes, they do.

Q. Will you describe, or, designate the points where those terminals are located, please?

[fol. 174] A. The terminals used by Nelson, as well as Gilbertville, is owned by Bergson.

Examr. Baumgartner: Will you spell that last name?

The Witness: B-e-r-g-s-o-n. It is the last of Chilberg and Nelson. The terminals used by both Nelson and Gilbertville owned by Bergson is at 25 West Road, Ellington, Connecticut; Woonsocket, Rhode Island; Newton, Massachusetts—and that would be all.

By Mr. Mueller:

Q. Is there one in Philadelphia?

A. There is a terminal owned by Bergson in Philadelphia, but Gilbertville does not rent there.

Q. It is occupied solely by—

A. Nelson.

Q. —L. Nelson?

A. Yes, sir.

Q. Do you know whether or not there is a terminal located at Monson, Massachusetts?

A. I do not.

Q. Is there a terminal on Long Island, Mr. Solomon?

A. I should know about New York, but—there is a New York terminal, and I believe you would call that part of Long Island.

Q. Is it jointly occupied, do you know, by the two companies, jointly used?

A. It is jointly used. It is not owned by Bergson Company, though.

[fol. 175] Q. Is it owned by Gilbertville or Nelson?

A. No. There is a third party that owns that.

Q. Is it owned by parties who are in any way related to the parties to this investigation?

Exam. Baumgartner: To this investigation?

Mr. Mueller: To this proceeding.

Exam. Baumgartner: This application proceeding.

The Witness: The person who owns the premises of the New York terminal is not in any way connected with either Gilbertville or Nelson's.

By Mr. Mueller:

Q. Can you tell us the proportion in which the rental is shared between the two companies at Ellington, Newton, and Woonsocket?

A. Ellington, Woonsocket, and where else?

Q. Newton.

A. Do you wish the rental charge paid by Gilbertville—

Q. I would be interested—

Exam. Baumgartner: He is just asking you for the proportions.

Miss Kelley: For clarity, can we have the rental paid by Nelson and then the—

The Witness: I'll give you the dollar amounts.

Exam. Baumgartner: If it is easier for the witness to do it that way—give them the dollar figure, if it is easier for you to do it that way.

Miss Kelley: Could you tell us if that is monthly?

The Witness: They pay it monthly. At Ellington, Nelson [fol. 176] son pays Bergson \$275 a month; Gilbertville sub-rents from Nelson at Ellington and pays Nelson \$100 per month; at Woonsocket, Rhode Island, Nelson pays Bergson \$100 per month and Gilbertville pays Nelson \$100 per month; at Newton—

Exam. Baumgartner: What was that?

The Witness: It's the same thing.

Exam. Baumgartner: Nelson pays?

The Witness: Bergson \$100 per month, and Gilbertville pays Nelson, same figure, \$100.

Exam. Baumgartner: So that it doesn't cost Nelson anything?

The Witness: That's correct.

Exam. Baumgartner: Go ahead with Woonsocket.

The Witness: That was Woonsocket, sir.

Exam. Baumgartner: Oh, I thought, that was Newton.

The Witness: No, I am coming to Newton now. It would be the same condition in Newton.

Exam. Baumgartner. A hundred dollars per month?

The Witness: A hundred dollars per month paid by Nelson to Bergson, and Gilbertville pays Nelson \$100 per month.

By Mr. Mueller:

Q. Can you tell us how long these arrangements for rental of terminals have been in effect?

A. Since January of 1956. There were other arrangements thereto.

Q. Can you tell us what those other arrangements were?

A. Yes. Prior to January 1, 1956, the rental of the Ellington terminal by Nelson, payable to Bergson, \$275 per month. Gilbertville paid Nelson for the use of the Ellington terminal \$50 per month. Woonsocket: Nelson pays Bergson \$100 per month with Gilbertville paying Nelson for the use of the Woonsocket terminal \$25 per month. At Newton: Nelson pays Bergson \$100 per month, with Gilbertville paying Nelson \$25 per month.

Q. What is the arrangement at Long Island, Mr. Solomon?

A. The Long Island terminal is: Nelson pays a third party \$500 per month, with Gilbertville paying Nelson \$250 per month.

Q. Is there some arrangement at the Gilbertville terminal at Gilbertville, Massachusetts, for joint use of the facilities?

A. To my knowledge Nelson does not use the Gilbertville

terminal at Gilbertville. It is solely used by Gilbertville alone.

Q. Now, Mr. Solomon, referring again to your Exhibit No. 11, Account No. 4400, Traffic, what sort of thing is included in that statement?

A. Sales, salaries and expense, traffic, office expense, advertising. That will be all. Tariffs would be in there.

Q. Now, you have another item on that Exhibit, No. 4560, Insurance and Safety—

Exam. Baumgartner: Is that 4560? 4500, isn't it?

The Witness: 4500.

Mr. Mueller: I'm sorry. The carbon is not clear.

By Mr. Mueller:

Q. As I understood you yesterday, you proposed some saving through the common placement of insurance for [fol. 178] the two companies—

A. Yes, sir.

Q. —assuming the proposed merger is authorized. I would like to ask you whether it is not a fact that the two companies placed their cargo and public liability and property damage insurance with the same company as at the present time?

A. I am quite certain they do not have their insurance with the same agents.

Q. Do you know?

A. I do.

Q. Can you give us the names of the companies?

A. I think I can.

Q. Will you please?

A. Gilbertville purchased its insurance from Charles Bentville of New York City, same agent who, prior to Kenneth Nelson assuming control, Gilbertville placed the insurance with; and Nelson's insurance is with Liberty Mutual. They have some with Charles Vogt.

Q. Does Liberty cover both cargo and PL and PD?

A. I am quite certain they do not. Are you assuming for both Gilbertville and Nelson?

Q. That's right.

A. No, they do not.

Miss Kelley: Can we have it clear as to which company the Liberty Mutual does provide, or if they provide both [fol. 179] cargo and PD?

Exam. Baumgartner: I understood the witness to say it provided insurance for Nelson Company.

Miss Kelley: Thank you.

The Witness: That's right, sir.

By Mr. Mueller:

Q. Who did you say covered the cargo for L. Nelson?

A. The Liberty Mutual, or Charles Vogt—v-o-g-t.

Q. Now, Mr. Solomon, in your direct testimony yesterday I believe you referred to some savings in equipment in connection with your testimony concerning Exhibit C-3 attached to the application. I would like to inquire whether any of the equipment shown on that exhibit was acquired by Gilbertville Trucking Company from L. Nelson?

A. I don't believe any of that equipment was acquired by Gilbertville from L. Nelson.

Q. You are referring now to the equipment listed on the exhibit only?

A. Yes.

Exam. Baumgartner: Exhibit C-3 attached to the application.

The Witness: The one that says encumbered property, yes.

Mr. Mueller: C-3, yes.

Q. Can you tell me whether any motor equipment was owned by the corporation, Gilbertville, when the stock was [fol. 180] acquired by the Nelsons?

A. May I have that question restated?

Q. The Gilbertville Trucking Company at that time owned some motor vehicle equipment?

A. Gilbertville Trucking did own equipment.

Q. Did that equipment go with the purchase of the stock?

A. That's right; that is included in the \$35,000.

Q. Subsequently, was any motor vehicle equipment purchased by Gilbertville from L. Nelson and Sons?

A. To my knowledge, none.

Q. Do you have charge of the equipment records of the two companies?

A. By "charge" I presume—

Q. Well, you have access to them, don't you?

A. That's correct.

Exam. Baumgartner: Well, he meant to say: do you have custody of them. I presume that is what you meant.

The Witness: I have detailed depreciation schedules of each.

Exam. Baumgartner: No. The question is: do you have custody of the books and records of the company?

The Witness: I supervise the books and records, but I do not have custody.

Exam. Baumgartner: You do not?

The Witness: No, sir.

By Mr. Mueller:

Q. Do you know what Kenneth A. H. Nelson's employ- [fol. 181] ment was between the time that he sold his stock in The Nelson Company and the time he purchased his stock in the Gilbertville Company?

Miss Kelley: I object to the question as not being related to the finance case, as beyond the scope.

Exam. Baumgartner: Can you tie that in with anything that was testified to on direct examination?

Mr. Mueller: Well, the gentleman testified yesterday that at the time he sold his stock that he owned and that he inherited, I believe, he severed his connections with The L. Nelson Transportation Company.

Exam. Baumgartner: That is what I understood.

Mr. Mueller: Now I am directing my question to that statement.

Exam. Baumgartner: Well, why don't you ask him that question?

By Mr. Mueller:

Q. Did he in any fashion, Mr. Solomon, continue in the employ of The L. Nelson Transportation Company?

A. In the sense of an employee: he was not—he was a

free lance tariff consultant, rendering bills periodically to Nelson.

Q. For services performed for Nelson? *

A. That's right, sir.

Q. After he purchased the Gilbertville stock, did Kenneth Nelson move his headquarters?

Miss Kelley: I object to this, too. This is not within the scope of the direct examination and is certainly not [fol. 182] related to the finance case.

Exam. Baumgartner: Oh, I think it is. I will overrule the objection.

The Witness: Kenneth Nelson's office still remained. The Gilbertville Trucking Company main office still was conducted in Ellington, Connecticut.

Mr. Mueller: That is all.

[fol. 183] By Mr. Keenan:

Q. Mr. Solomon, you have been authorized, have you not, by the management of both Gilbert Trucking Company and L. Nelson and Sons to appear in their behalf in this proceeding?

A. That's right, sir.

Q. And do I recall your testimony correctly that you have had conversations with the personnel comprising the present management of each of these companies concerning the acquisition by the present management of Gilbert Trucking Company, of its control of Gilbert Trucking Company?

A. I did have conversations with them.

[fol. 186] Exam Baumgartner: No. The question was whether you were instructed to refrain from disclosing information.

The Witness: I was not instructed.

By Mr. Keenan:

Q. Were you thus instructed, Mr. Solomon, to refrain from disclosing information by anyone who is a member of

the management personnel of Gilbert Trucking Company, Inc.?

Miss Kelley: I object. That is repetitious.

Exam. Baumgartner: This is with respect to Gilbertville, now.

Q. Gilbertville Trucking Company, Inc.?

A. The answer is the same: No.

Q. Then just to make sure I understand you completely, sir, that means that at no time Oscar Herbert Chilberg ever gave you any such instructions, right?

A. That's right, sir.

Q. The same is true of Charles Chilberg?

A. That's right.

[fol. 187] Q. Kenneth Nelson?

A. That's right.

Q. Clifford Nelson?

A. That's right.

Q. Do you consider yourself to be a member of the management of L. Nelson and Sons, Inc.?

A. No, sir.

Q. Do you consider yourself to be a member of the management of Gilbert Trucking Company, Inc.?

A. No, sir.

Q. Gilbertville Trucking Company, Inc.?

A. No, sir.

Q. Therefore, am I correct in concluding that you are not in a position to speak authoritatively for the management of either of those companies?

Exam. Baumgartner: With respect to what matters, now?

Mr. Keenan: With respect to any matters.

Exam. Baumgartner: That is too broad a question.

Mr. Keenan: The Examiner instructs me not to ask it?

Exam. Baumgartner: No, the Examiner asks you to limit your question to the inquiry that is at hand, sir.

Mr. Keenan: Very well, sir.

By Mr. Kelley:

Q. Am I correct in understanding, then, Mr. Solomon, that you are not authorized to speak for the management of either of these companies with respect to their plans [fol. 188] for use in the future of the merged authorities, approval of merger which is sought in this proceeding?

Miss Kelley: I object to the question for the purpose of clarification. Are you referring to operational matters or finance matters?

Mr. Keenan: If the Examiner please, I don't care to answer counsel's question, except with the Examiner's permission or by the Examiner's direction.

Exam. Baumgartner: Well, let's take it up piecemeal. Will you limit your question first to operational matters—

Mr. Keenan: I shall be glad to.

Exam. Baumgartner: —future operational matters of the merged company.

Mr. Keenan: I shall be glad to.

By Mr. Keenan:

Q. Are you authorized to speak for the management of either of these companies with respect to the future operational use which will be made of the merged operation?

A. I am not.

Q. Are you authorized to speak for either of these companies, for the management of either of these companies, with respect to the future plans for financing any operations to be conducted as a result of the merger?

A. I am not.

Exam. Baumgartner: What do you mean by future plans for financing, Mr. Keenan?

[fol. 189] Mr. Keenan: Mr. Examiner, I have in mind that often when unifications occur of carriers, it is necessary to obtain additional equipment or to readjust equipment rosters.

Exam. Baumgartner: That has nothing to do with finance.

Mr. Keenan: I was going on to say that such changes or adjustments frequently require new capital, and the obtaining of such new capital would in my lexicon constitute new financing.

Exam. Baumgartner: I understand now what you are driving at.

By Mr. Keenan:

Q. Did I understand you to mean that, Mr. Solomon?

A. Yes.

Q. Now, in the past, Mr. Solomon, since January of 1949 —let me withdraw that question for the moment.

If I were to use the phrase: "Making executive decisions," in a question to you, what would you understand me to mean by that?

A. Yes. Decisions of policy.

Q. All right, sir. Now, since January of 1949, have you made or helped to make decisions of policy with respect to the operations or conduct of the business of L. Nelson and Sons, Inc.?

A. I have given recommendation as to the financing of the business.

Q. In the future do you expect to continue to make such recommendations if you retain your present relationship [fol. 190] with L. Nelson and Sons, Inc.?

A. That is correct.

Q. At any time in the past have you made such recommendations with respect to the affairs of Gilbert Trucking Company, Inc.?

A. Directly to Kenneth Nelson of Gilbertville Trucking, yes.

Q. When did you begin to make such recommendations with respect to the affairs of Gilbertville?

A. As soon as Kenneth Nelson started negotiations for Gilbertville Trucking Company.

Exam. Baumgartner: Negotiations for the purchase of the stock?

The Witness: Purchase of the capital stock, yes, sir.

Exam. Baumgartner: You made those recommendations to whom?

The Witness: Kenneth Nelson.

Exam. Baumgartner: But not to Gilbertville Trucking?

The Witness: Not to Gilbertville Trucking, no, that's right.

By Mr. Keenan:

Q. Did those negotiations begin January 19, 1953?

A. That would be the date, approximate date; yes, sir.

Q. Aside from whether it would be the date, was it the approximate date?

A. I said it is the approximate date.

Q. Do you expect in the future to continue to make such recommendations to any members of the personnel of the management of Gilbertville?

[fol. 191] A. Yes, sir.

Exam. Baumgartner: What was that question, again?

Mr. Keenan: Does the Examiner want me to repeat or the reporter to read it?

Exam. Baumgartner: Well, it probably would be a little quicker for you to repeat it.

Mr. Keenan: Does the witness expect in the future to continue to make such recommendations to the management of Gilbertville?

Exam. Baumgartner: He just denied that he made any recommendations to the management of Gilbertville.

Isn't that right, Mr. Witness?

Mr. Keenan: No, I didn't understand him to do so.

Exam. Baumgartner: I mean—I'm sorry. I'm mistaken. He did testify that he made recommendations to Mr. Kenneth Nelson after he assumed control of Gilbertville; that's correct?

The Witness: Right, sir.

Exam. Baumgartner: Now your question, is that premised upon a denial of the application for a merger and a continuance of Gilbertville as a separate entity?

Mr. Keenan: My question sought to determine what the witness' expectation was, if the Examiner please.

Exam. Baumgartner: With respect to Gilbertville as a continuing separate entity?

Mr. Keenan: No, sir, with respect to Gilbertville under [fol. 192] whatever circumstances may characterize its existence.

Exam. Baumgartner: Well, with this merger it disappears.

Mr. Keenan: I suppose that is true. Shall I continue?

Exam. Baumgartner: Yes.

By Mr. Keenan:

Q. In the course of your direct examination, Mr. Solomon, I was able to make partial notes concerning the stock transfers you spoke of. I should like in the next two or three questions to supplement the information I have in my notes. I don't think it's in the transcript yet. Am I correct in understanding that in January of 1949 the stock of L. Nelson and Sons was owned by Linnea Nelson—Mrs. Linnea Nelson—Oscar Chilberg, Charles Chilberg, Kenneth Nelson, and Cliff Nelson, and Howard Chilberg, and by no one else?

A. That's incorrect.

Mr. Keenan: Strike out Howard Chilberg. I was in error.

The Witness: Right.

Q. Striking Howard Chilberg, is it a correct statement?

A. Right, sir.

Q. At some time during 1949, am I correct in understanding that Mrs. Linnea Nelson's stock interest was reduced from 496 shares to 300 shares?

A. That is correct, sir.

Q. Would you give me your best recollection, or, the best information you can obtain from the records you have with [fol. 193] you as to when in 1949 this reduction in the stock owned by Mrs. Linnea Nelson took place?

A. Last night I had a chance to look up the stock book on my testimony which I stated as 1949. The exact date is May 14, 1948, that Linnea Nelson gave to each of four children forty-nine shares apiece.

Q. Do you have that stock book with you?

A. The stock book was supposed to have been brought here.

Miss Kelley: I have the stock book, Mr. Examiner.

Q. Will you show me the entry in the stock book that indicates that to be the truth?

Exam. Baumgartner: Off the record.

[Discussion off the record.]

Exam. Baumgartner: Back on the record now.

Let the record show that counsel, Mr. Keenan, was permitted to inspect the stock record book of The L. Nelson and Sons Transportation Company.

Mr. Keenan: And I am further glad to stipulate that it reflected the exact accuracy of the witness' previous testimony.

Exam. Baumgartner: Thank you.

By Mr. Keenan:

Q. Is it correct, sir, that this corporation, L. Nelson and Sons, Inc., was formed February 7, 1948?

A. That is correct.

Q. And then your answer to my previous question, my first question with regard to stock ownership, was in error, [fol. 194] was it not: on January of 1949?

A. That's right. I did state that was in error.

Q. No, sir, your answer to the question was correct, if I recall. I didn't ask you the exact number of shares owned. Now, on February 7, 1948, between February 7, 1948, and May 14, 1948, the distribution of shares was as follows, is this not correct: 496 shares with Linnea Nelson, one share with Osear Chilberg, one share with Charles Chilberg, one share with Kenneth Nelson, one with Clifford Nelson?

A. That is correct, sir.

Q. Then as of—and correct me if I'm wrong about this—May 14, 1948, Linnea Nelson's interest was reduced to 300 shares?

A. Right, sir.

Q. Oscar Chilberg's interest increased to fifty shares? Charles Chilberg's—

The Examiner: Don't shake your head. Say yes.

The Witness: Yes, sir.

Q. Charles Chilberg to fifty shares?

A. Yes, sir.

Q. Kenneth Nelson to fifty shares?

A. Yes, sir.

Q. Clifford Nelson to fifty?

A. Yes, sir.

Q. On January 5, 1950, Mrs. Linnea Nelson passed away, correct?

[fol. 195] A. Yes, sir.

Q. Did any change in the distribution of stock ownership of L. Nelson and Sons occur between May 14, 1948, and January 5, 1950, so far as your records permit you to determine?

A. There was no change in those dates.

Q. Now, as I recall your previous testimony, you told us that approximately on June 30, 1951, a further change did take place?

A. Yes, sir.

Q. My next question to you is: At any time between January 5, 1950, and June 29, 1951, did any change take place in the distribution of stock ownership of L. Nelson and Sons?

A. No change took place in the stock distribution.

Q. Is my understanding correct that on June 30, 1951—well, withdraw that question.

Of course, on January 5, 1950, the 300 shares of stock theretofore owned by Mrs. Linnea Nelson accrued to the estate of Mrs. Linnea Nelson, right?

A. That is correct.

Q. On June 30, 1951, is it correct that the estate of Mrs. Linnea Nelson owned 300 shares?

A. That's right, sir.

Q. Oscar Chilberg owned no shares?

A. Oscar Chilberg had no shares, that's right, and the estate still had three hundred shares.

Q. Charles Chilberg owned 100 shares?

[fol. 196] A. Charles Chilberg then owned 100 shares, correct.

Q. Kenneth Nelson owned fifty?

A. That is correct.

Q. Clifford Nelson owned fifty?

A. No. Clifford Nelson—I'm sorry, you are right.

Q. June 30, 1951?

A. Kenneth Nelson only had fifty shares.

Q. And Clifford Nelson only had fifty?

A. That's right, sir.

Q. As of June 30, 1951, even though Oscar Chilberg no longer owned any shares of L. Nelson and Sons, Oscar Chilberg was an executor of Mrs. Linnea Nelson's estate, correct?

A. That's right, sir.

Q. Therefore he had the power to participate in the voting of the 300 shares of stock owned by the estate, correct?

A. Right, sir.

Q. At that time, June 30, 1951, Charles Chilberg was not only an executor of that estate, but he was also an employee and a director of L. Nelson and Sons, was he not?

A. That is right.

Q. I speak of the date June 30, 1951.

A. Yes, sir.

Q. On that date Kenneth Nelson was a director, is that correct?

A. That's right.

Q. On that date Clifford Nelson was a director?

[fol. 197] A. Right.

Q. Now, between February 7, 1948, and June 30, 1951, am I correct in understanding that none of the following people owned any shares of L. Nelson and Sons: Howard Chilberg, Ruth Widham—is it Greta Carlson?

A. Greta Nelson Carlson, right—her marriage name.

Q. Phyllis Nelson, a man named Kashady, and a man named Paroshinsky—none of those people owned any shares in this corporation?

A. In the Nelson corporation?

Q. In the Nelson corporation as of June 30, 1951?

A. None of them owned any shares.

Q. However, on February 7, 1948, Howard Chilberg was a director, was he not?

A. Howard Chilberg a director?

Q. Yes.

A. He was not a director.

Q. He was an employee?

A. That's correct.

Q. He was an employee on May 14, 1948, was he not?

A. Yes.

Q. Was he an employee on June 30, 1951?

A. That's right, he still was an employee of Nelson's, Howard Chilberg was.

Q. On June 30, 1951, is it correct that Ruth Widham [fol. 198] was an executor of Mrs. Linnea Nelson's estate?

A. That is correct.

Q. With the power to contribute to the voting of the 300 shares of stock owned by that estate that you and I have previously discussed?

A. That is correct.

Q. On September 22, 1951, is it correct that the estate continued to own 300 shares?

A. That is correct.

Q. Oscar Chilberg owned no shares?

A. That's right.

Q. However, he continued to be an executor of the estate, right?

A. That's right, sir.

Q. Charles Chilberg owned 150 shares on September 22, 1951? Is that correct?

A. September 22, 1951? No, Charles Chilberg does not have 150 shares. He still continued at 100 shares.

Q. I see. How many shares on that date does Kenneth Nelson own?

A. You are referring now to September 22, 1951?

Q. That's correct.

A. When Kenneth Nelson sold his fifty shares to Clifford Nelson—I think that would correct it.

Q. On September 22, 1951, Charles Chilberg owned 100 shares, is that correct?

[fol. 199] A. That's right, sir.

Q. He continued to be a director of the corporation on that date, correct?

Miss Kelley: Who?

Mr. Keenan: Charles Chilberg.

The Witness: Yes, Charles Chilberg.

Q. On that date Kenneth Nelson owned no shares, correct?

A. That is right, sir.

Q. He ceased to be a director of the corporation on that date?

A. Yes, sir.

Q. He also ceased to be an officer and an employee, is that correct?

A. That is right, sir.

Q. On September 22, 1951, Clifford Nelson owned 100 shares of the corporation, correct?

A. Right, sir.

Q. He continued on that date to be a director of the corporation?

A. Correct.

Q. On September 22, 1951, Howard Chilberg owned no shares?

A. That is correct.

Q. He continued to be a director?

A. Yes, sir.

Q. Ruth Widham owned no—

Miss Kelley: Wait a minute. Did you hear that last question and answer?

[fol. 200] The Witness: Yes.

Miss Kelley: On Howard Chilberg?

Mr. Keenan: Excuse me, Miss Kelley.

May counsel be directed to address the Examiner and ask the Examiner's permission to—

Miss Kelley: Mr. Examiner, may I ask the witness if he understood the last question, because I believe he is confused on the names; and it is my understanding—

Exam. Baumgartner: Did you understand that last question?

The Witness: Yes. He said Howard Chilberg—

Miss Kelley: Was a director on September 22.

The Witness: And I said: no, he was not.

Miss Kelley: I understand you to say: yes, he was a director.

Mr. Keenan: So did I. Thank you, Miss Kelley.

By Mr. Keenan:

Q. Howard Chilberg on September 22, 1951, was not a director?

A. That's right; never at any time.

Mr. Keenan: Oh, I am sorry. That was very misleading of me. I apologize. It was inadvertent.

Q. You have previously told us Howard Chilberg was an employee?

A. That's right.

Exam. Baumgartner: Just a moment. Aren't we interested in the nature of his employment with the company?

Mr. Keenan: Yes, sir. I expect to inquire into that as [fol. 201] soon as I have gotten the picture.

Exam. Baumgartner: Excuse me.

By Mr. Keenan:

Q. Now, he continued to be an employee on September 22, 1951, is that correct?

A. That's right, sir.

Q. And on that date Ruth Widham continued to be an executor of Mrs. Linnea Nelson's estate, right?

A. That is right, sir.

Q. Otherwise she had no relationship to the corporation?

A. That is right.

Q. And Greta Carlson, Phyllis Nelson, Kashady and Paroshinsky had nothing to do with the corporation on that date?

A. No, never.

Q. Now, if I recall your direct testimony correctly, something happened on December 31, 1952, with respect to the Linnea Nelson estate. Will you tell me what?

A. Yes. The Linnea Nelson estate was closed as of December 31, 1952, and the 300 shares of stock held by the estate was then distributed.

Q. Now, do your stock records reflect that?

A. The stock records—I believe they do.

Q. Will you show me the certificate cancellation for the 300 shares of stock theretofore owned by the estate?

Is this it?

A. Yes.

[fol. 202] Q. Well, Mr. Solomon, my question was: do you have in your stock records a notation of cancellation of a stock certificate for 300 shares in the corporation theretofore owned by the estate of Mrs. Linnea Nelson?

A. The stock book shows it cancelled here.

Q. And on what date is it shown to be cancelled in your stock book?

A. Yes, sir. January 24, 1953.

Q. Now I invite you to recall the testimony you just gave me to the effect that the 300 shares of stock in the estate were distributed on December 31, 1952. Do you desire to change that testimony?

A. No. We did say that the estate was closed as of December 31, 1952. However, for the legal procedure it took until January 24, 1953, before anybody actually received the stock. But the estate was actually closed on December 31, 1952.

Q. When you say closed, what do you mean by that verb?

A. Liquidated, where the judge of probate approves of the final accounting.

Q. Do you recall seeing an order from the Probate Court discharging the executors of responsibility on that date, or effective?

A. I wouldn't know the ~~exact~~ date, but it was approximate.

Q. I just wondered why you came up with the date: December 31, 1952, as the date the estate closed?

[fol. 203] A. Yes.

Q. How do you know it was?

A. I was the one who prepared the final accounting for the estate as of that date.

Q. That was the date the final accounting was filed in the Probate Court?

A. That's right, and they accepted it.

Exam. Baumgärtner: The final accounting closed as of December 31, is that what I am to understand?

The Witness: That's right, sir.

Exam. Baumgärtner: But not the estate?

The Witness: In my opinion, it was the estate that closed as of December 31, 1952.

Exam. Baumgartner: You just got through saying that there were some steps necessary to be taken after December 31 in connection with the transfer of stock?

.

[fol. 204] By Mr. Keenan:

Q. Mr. Solomon, do you supervise the keeping of that stock book?

A. No, I do not; no.

Q. Do you consider yourself competent, sir, to explain the significance of entries in the stock books of L. Nelson and Sons, Inc.?

A. I think I am.

Exam. Baumgartner: To what extent?

Q. To what extent?

A. Not any of the legal content, but as to the ownership of stock.

.

[fol. 207] By Mr. Keenan:

Q. On January 23, 1953, according to the stock book, who had control of those 300 shares?

A. The estate that was in the process of winding up. As I said, as of December—

Q. That is enough.

A. —31, 1952.

Q. All right.

Q. What was the pattern of distribution recognized by the Probate Court, finally, of these 300 shares? Forty-two shares to each of seven children, if I recall correctly?

A. That's right, sir.

Q. Five of those children, am I correct in understanding, were Oscar Chilberg, Charles Chilberg, Kenneth Nelson, Clifford Nelson, and Howard Chilberg?

A. That's right, sir.

Q. Were the other two children Ruth Widham and Greta N. Carlson?

A. That's right, sir.

Q. Was the estate at any time thus distributed to the legatees?

Miss Kelley: I object to the—

Q. Is the question clear?

Miss Kelley: —form of the question.

If you put it—instead, if you would state to me what [fol. 208] you meant by legatees?

Q. Oh, was the estate at any time thus distributed to the seven people we have just talk about?

Is there objection?

Miss Kelley: No.

The Witness: It was distributed on January 24, 1953.

Q. January 24, 1953?

A. That is correct.

Q. So that, after that distribution on January 24, 1953, am I correct in understanding that the estate of Linnæ Nelson owned no shares in the corporation?

A. That is correct.

Q. Oscar Chilberg owned forty-two shares in the corporation?

A. Right, sir.

Q. Charles Chilberg owned 142 shares?

A. That is correct.

Q. Kenneth Nelson owned forty-two shares?

A. That is right, sir.

Q. Cliff Nelson owned forty-two—

A. No; no, Cliff Nelson—

Q. Excuse me. Cliff Nelson owned 142?

A. That is right.

Q. Howard Chilberg owned forty-two?

A. That is right, sir.

Q. Ruth Widham owned forty-two, is that right?

[fol. 209] A. Right.

Q. And Rita Carlson owned forty-two?

A. Right.

Q. At some time did the number of shares owned by Kenneth Nelson decrease, thereafter?

A. The number of shares owned by Kenneth Nelson was sold by him—

Q. Excuse me, sir. Will you answer the question? The question calls for a yes-or-no answer. At some time did the number of shares owned by Kenneth Nelson thereafter—

A. Yes.

Q. —decrease?

A. Yes.

Q. When? What date?

A. January 24, 1953.

Q. As the result of that decrease, whose ownership of shares increased? In other words, to whom did Kenneth Nelson transfer his forty-two shares?

A. I'll have to see that book. Yes, sir, I am able to answer that question now.

Q. Sir?

A. I am able to answer that question now.

Q. Will you do so?

A. The forty-two shares that were owned by Kenneth Nelson were then sold to Clifford Nelson.

[fol. 216] Q. Now, does your stock book reflect Kenneth Nelson's acquisition of those forty-two shares on January 24, 1953? Is the answer yes?

A. Yes, it does.

Exam. Baumgartner: Well, let the record show that counsel for both parties and the witness are inspecting the stock record.

By Mr. Keenan:

Q. Now, your records reflect that those forty-two shares went to Charles Chilberg, is that correct?

A. No, it does not.

Q. No, it does not; you are right.

A. It went to—

Q. It went to—

A. —Clifford Nelson.

Q. —Clifford Nelson, yes.

A. That's right, sir.

Q. As a result of that transfer, Clifford Nelson had 142 shares in the corporation, right?

A. That is right.

Miss Kelley: Check your figures—Mr. Examiner, do you mind, I think—

The Witness: That's right, mathematically I think I'm wrong there. The fifty, forty-two and forty-two, would not be the figure we are talking about. It's 134 shares.

Exam. Baumgartner: That was in the ownership of Clifford?

[fol. 211] The Witness: Clifford would have 184 shares at that time.

Miss Kelley: That would have to be cleared.

By Mr. Keenan:

Q. Mr. Solomon, I think a source of confusion may be that I have only inquired about Kenneth Nelson's forty-two shares and what happened to them on January 24, 1953.

A. Kenneth Nelson does not have any more shares after January 24, 1953.

Q. Kenneth Nelson transferred his forty-two shares to Cliff Nelson, right?

A. That is right, sir.

Q. Theretofore Cliff Nelson had had 100 shares, had he not?

A. He had a hundred plus forty-two that he received from the estate, is 142.

Q. Of course you are right, 184; right?

A. That is right, 184 shares.

Q. Now, on January 24, 1953, did anybody other than the estate of Linnea Nelson and Kenneth Nelson transfer any shares?

A. Yes.

Q. Who?

A. Oscar Herbert Chilberg sold his forty-two shares.

Q. And who did he transfer them to?

A. To Charles Chilberg.

Q. Does that mean that Charles Chilberg owned 184 shares on that date, after that transfer had been executed?

A. That is right.

Q. Did any other such transfers take place on January 24, 1953?

[fol. 212] A. No other on that particular date.

Q. Then, to sum up the distribution of the stock ownership at midnight on January 24, 1953, is it correct to say that the estate of Linnea Nelson owned none, Oscar Chilberg owned none, Charles Chilberg owned 184—am I going too fast?

A. No, that's all right.

Q. Kenneth Nelson owned none, Clifford Nelson owned 184, Howard Chilberg owned forty-two, Ruth Widham owned forty-two, and Rita Carlson owned forty-two? Is that correct? Would you like that repeated?

A. That is correct, sir. Now, that you will find is six shares less than 500 shares.

Q. So there were remaining on midnight of January 24, 1953, six shares of stock, right?

A. Yes.

Q. And those were transferred by the estate of Linnea Nelson, were they, to the corporation itself?

A. The corporation purchased it for \$600.

Q. Now, at any time between January 24, midnight of January 24, 1953, and February 27, 1953, did any change in the distribution of stock ownership of this corporation take place?

A. No, there was none.

Q. On February 28, 1953, there was such a change, was there not?

A. Yes, sir.

[fol. 213] Q. Will you tell me what that change was?

Exam. Baumgartner: Off the record for a moment.

[Discussion off the record.]

Exam. Baumgartner: Back on the record, now.

The Witness: I can answer that. On February 28, 1953, Ruth Widham, who is now Mrs. Nyberg, sold her forty-two shares distributed as follows: twenty-one to Clifford Nelson and twenty-one to Charles Chilberg.

[fol. 214]

By Mr. Keenan:

Q. Now, as the result of Mrs. Nyberg's sale, or transfer rather, of stock, is it true that Clifford Nelson held on February 28, 1953, 205 shares of Nelson and Company stock?

A. Two hundred five would be correct, sir.

Q. And that Charles Chilberg held 305 such shares on that date?

A. No, not 305—205.

Q. Two-o-five?

A. Right.

Q. Were there any other such stock transfers which occurred on February 28, 1953?

A. No, there are not. I testified yesterday that Howard Chilberg sold his shares at that time, but looking at the stock book before the recess I see where his shares were sold on March 14, 1953.

Q. So on February 28, 1953, the estate held none and Oscar Chilberg held none, Charles Chilberg held 205, Kenneth Nelson had none, Cliff Nelson had 205, Howard Chilberg had forty-two, Ruth Widham—Mrs. Nyberg—had none, Rita Carlson had forty-two, and the corporation had six?

[fol. 215] A. That is correct, sir.

Q. Now, on March 1, 1953, it is true, is it not, that Kenneth Nelson acquired control of Gilbertville?

A. That is correct, sir.

Q. The stock distribution on March 1, 1953, according to your records, is the same as that we have just discussed at the close of business on February 28, 1953, is it not?

A. That is correct.

Q. On April 1—withdraw that.

What was the next date—

A. March 14, 1953.

Q. On March 14, 1953, another stock transfer took place, and Howard Chilberg transferred some stock, right?

A. That is correct, sir.

Q. Did he transfer all of his forty-two shares?

A. That is right.

Q. To whom did he transfer them?

A. Twenty-one shares to Charles Chilberg and twenty-one shares to Clifford Nelson.

Q. Now, to recapitulate, on March 14, '53, Oscar Chilberg had none, Charles Chilberg had 226, Kenneth Nelson had none, correct?

A. That is right, sir.

Q. Clifford Nelson had 226, Howard Chilberg had none, Mrs. Nyberg had none, Rita Carlson had forty-two, and [fol. 216] the corporation had six?

A. That is right, sir.

Mr. Keenan: I had some notes prepared with regard to this, but the additional information we have worked up has run off my page. I have got to take a minute to set up another one.

Q. Now, between March 14, 1953, and April 1, 1954, do your records disclose that the stock distribution which you have just given me changed in any way?

A. No, they have not.

Q. On April 1, 1954, was there a change in the stock distribution of L. Nelson and Sons?

A. No, there has not been any change.

Q. On April 1, 1954, Oscar Chilberg did something to affect his relationship to Gilbertville, is that correct?

A. That is right, sir.

Q. But no change occurred in the stock distribution of Nelson and Sons?

A. No, there has not been any.

Q. Now, since March 14, 1953, has there been any change whatsoever in the stock distribution of The Nelson and Sons' stock?

A. There has been no transfers of any stock since March 14, 1953 in Nelsons.

Q. Now, on December 31, 1953, had you familiarized yourself, or had occasion to familiarize yourself, rather, with the financial statements reflecting the financial position [fol. 217] of both Gilbertville and L. Nelson?

A. That is right.

Miss Kelley: Mr. Keenan, could I have that date you mentioned?

Mr. Keenan: December 31, 1953.

Miss Kelley: Thank you.

[fol. 234] By Mr. Keenan:

Q. Mr. Solomon, I show you—well, let me ask: Were you associated with Gilbertville at the time it acquired the Wolff's Express Company, Certificate No. MC-64627?

A. Wolff was acquired after March 1, 1953, yes.

[fol. 235] Q. Well, this was some time in May, 1954?

A. It was.

Q. Now, do you happen to know whether it is true that on April 28, 1954, when Kenneth Nelson filed an application with the Commission requesting approval of that certification, acquisition, that the statement made in that application that the transferor, Gilbertville, had eight vehicles is correct? In other words—

A. April?

Q. That is April 28, 1954. This was the reason for my first question to you.

A. Yes, it would be substantially correct.

Q. That is an answer that is sufficient.

Miss Kelley: For clarification—

Exam. Baumgartner: Let me ask now: How were those vehicles counted?

Mr. Keenan: I should be glad to place that in the record, if the Examiner cares to have that, subject to correction by the witness.

Exam. Baumgartner: I would like to have the record note the information sought.

By Mr. Keenan:

Q. Mr. Solomon, am I correct in noting on this application that it reflects three tractors—wait a minute.

A. There's an error in addition there.

Miss Kelley: There is no error in addition. May I explain, Mr. Examiner, that this application shows three tractors and eight semi-trailers, but for the computation for the Commission, under these, we compute the number of units that the Commission would consider it, so the three tractors and three trailers are considered as one complete unit; and, of course, the excess trailers—

Exam. Baumgartner: That is what I am getting at.

Mr. Keenan: Three tractors and three semi-trailers, I would stipulate if counsel cares to.

Exam. Baumgartner: Which would make a total of eight complete units for the purpose of the application?

Mr. Keenan: Yes, sir.

Miss Kelley: That's right.

By Mr. Keenan:

Q. Well, in all there were eleven units, then, in April of 1954?

A. I would say that is substantially correct.

Q. Which Gilbertville owned?

A. Yes, sir.

Q. Or used?

A. Right.

Q. Then, in August of 1955 there were twenty units, twenty units of rolling equipment, which Gilbertville owned? I am now referring to the application in this proceeding which was—

Exam. Baumgartner: Which part of the application?

Mr. Keenan: I am just wondering about my date now, [fol. 237] Mr. Examiner.

Mr. Barrett: August 27.

Mr. Keenan: Is that when it was filed? I am referring, Mr. Examiner, to Page 2, Paragraph 3.

Exam. Baumgartner: I have it now, yes.

By Mr. Keenan:

Q. Do you confirm the accuracy, Mr. Solomon, of what is stated in the application in this proceeding?

A. I do not have the date of August, but the year and dates that I do have here, I would say is substantially correct.

Q. Now, you do have the year and dates?

A. Yes, sir.

Q. Would you give me the number of units of equipment which Gilbertville had at the end of 1954?

A. Twelve units at the end of 1954.

Q. At the end of '55?

A. End of '55, twenty-four units.

Q. So that is—

Exam. Baumgartner: Now, just a moment. When you speak of units, do you speak of a tractor as being one unit and a trailer being another unit?

The Witness: That is right, sir.

Exam. Baumgartner: All right, that will clarify the record.

Mr. Keenan: Thank you, Mr. Examiner.

By Mr. Keenan:

Q. So to sum this information up, Mr. Solomon, is it correct to say that Gilbertville's equipment has increased [fol. 238] from eleven units in April of '54 to twelve units in December of '54 to twenty units in August of '55 to, what was your final figure?

A. Twenty-four units, December of '55.

Exam. Baumgartner: Now just a moment, while we are on the subject. Are you referring to units that are owned by Gilbertville Trucking?

The Witness: That is right, sir.

Exam. Baumgartner: Not-leased?

The Witness: Not leased.

Exam. Baumgartner: Owned?

The Witness: Owned.

[fol. 243] By Mr. Keenan:

Q. Mr. Solomon, would you tell me from how many sources Gilbertville has acquired its equipment since 1953, its new equipment, sir?

[fol. 244] A. New equipment, well, the tractors were always bought at International.

Exam. Baumgartner: You mean International Harvester?

The Witness: Harvester. However, it could be the International Harvester at Albany, or some other place.

Mr. Barrett: May we go off the record?

Exam. Baumgartner: Off the record a moment.

[Discussion off the record.]

Exam. Baumgartner: Back on the record now.

Now can you complete your answer, Mr. Solomon?

The Witness: Yes, I can also complete his original question, too, I believe.

Exam. Baumgartner: Well, answer the question that is now before you, and then go back to the earlier question if he still wants an answer to it.

The Witness: Your question was: who do they purchase their equipment from?

Exam. Baumgartner: Since what date?

Mr. Keenan: March 1, 1953.

Exam. Baumgartner: Since March 1, 1953.

The Witness: All the Internationals would be bought from International Harvester, meaning all the trucks and tractors. Stright trucks and tractors are all purchased from International Harvester. Trailers were purchased from Strick and Freuhauf.

Exam. Baumgartner: Who is that first one?

[fol. 245] The Witness: Strick—s-t-r-i-c-k.

By Mr. Keenan:

Q. The other question which I asked you, which you said you are now able to answer, is: how many new units of equipment—I don't mean new—how many units of equipment were acquired by Gilbertville since March 1, 1953?

A. To December 31, 1955, I believe?

Q. Well, of whatever dates you can bring it up, Mr. Solomon?

A. It's twenty-two units.

Q. That is between March 1, '53, and December 31, '55, right?

A. That is correct.

Q. Now, this twenty-two units for this period we have been discussing includes all units acquired by Gilbertville, whether new or used, is that right?

A. That is right, sir.

Q. Now can you—

Exam. Baumgartner: When you use the word "acquired" you mean purchased?

The Witness: That is right, sir.

By Mr. Keenan:

Q. Now, Mr. Solomon, have you a record which is the basis for your calculation that twenty-two units were acquired?

A. Yes, I have a rough record here. I went to the corporation tax return of each year to look at what units were traded in or sold, and by merely subtracting from the year [fol. 246] end inventory, that is how I acquired that information.

Q. Oh, you did that for the entire year 1953 to start with, then, right?

A. I began as of March 1, 1953, and went all the way to December 31, 1955.

Q. I see, but you told me you went to the tax return: Gilbertville's taxable year, does it begin January and end December?

A. That is right, sir.

Q. Or does the tax return reflect the dates of acquisition?

A. The date of acquisition, I was speaking about the equipment that was sold or traded in during that time.

Q. Sold by whom?

A. And I merely subtracted from the inventory figures we have here.

Q. Sold by whom?

A. Sold by Gilbertville or traded in.

Q. I see. Well, Mr. Solomon, what are the figures you used in this arithmetical subtraction, computation, by which you decided how much new equipment Gilbertville acquired during 1953, after March?

Mr. Keenan: I might note, Mr. Examiner, that I am going at this a little clumsily because I don't want to ask to look at the income tax files that the witness is referring to, which I think are properly confidential information of the applicant.

The Witness: As of March 1, 1953, there were eight units.

[fol. 247] Q. Yes?

A. As of December 31, 1955, there were twenty-four units.

Q. Yes?

A. That would indicate an increase of sixteen.

Q. Yes?

A. And in that period six units were either traded in or sold, and I am assuming they were used to purchase new equipment with.

Q. Right. Now, what is the source of your information which leads you to believe that all tractors and Stright trucks were purchased from International?

A. The bills from International Harvester.

Q. Now, were those purchases made directly from the manufacturer, or were they made from a distributor?

A. It's the International Harvester dealership. Whether or not that is the direct factory or it's a representative of the factory, I do not know.

Q. Were the purchases of trailers from Strick and Freuhauf made from the manufacturer or from a dealer?

A. To my knowledge the purchases from Freuhauf or Strick were usually made from the manufacturer.

Q. When you say to your knowledge, do you mean so far as your knowledge permits you to reach a conclusion?

A. That's right, without now looking it up to find out exactly who they bought it from. I would need the purchase invoice, and I am trusting to my memory. I would like to, [fol. 248] if I may, make a correction. I find on February 4, 1953, a trailer was sold that I should not have used in my computation here. Therefore, the pieces of additional equipment purchased since 1953—

Exam. Baumgartner: Since March 1?

The Witness: Since March 1, 1953, would be twenty-one instead of twenty-two.

By Mr. Keenan:

Q. Now, on March 31, 1954, or indeed, at any time during the year 1954, did Gilbertville Trucking Company owe any money to any of its officers or directors?

A. Yes, it did.

Q. During the year 1953, did Gilbertville owe any money to its officers and directors?

A. It did.

[fol. 252] By Mr. Keenan:

Q. The question is: as of December 31, 1953, Mr. Solomon, please advise me how much money Gilbertville owed to its officers and directors?

A. \$11,792.05.

Q. As of March 31, 1954, do you have any information as of that date?

A. March 1, '54?

Q. March 31, is the date I have reference to.

A. I do not have anything here with me that would give me the answer as of March 31 of '54.

Q. All right; November 9, 1954?

A. I can give you the year end.

Q. Do you have anything on November 9, 1954?

A. No, I would not have it.

Q. All right; December 31, 1954?

A. Yes, sir. Notes payable to Kenneth Nelson on December 31, 1954: \$15,024.13.

Q. \$15 thousand—

[fol. 253] A. \$15,024.13.

Q. May 31, 1955, the date dealt with by your Exhibit B-4 in the application in this proceeding.

A. On May 31, 1955, \$14,037.75.

Q. December 31, 1955, the date covered by your Exhibit 5 in this proceeding? That is not with the application.

A. \$15,597.

Q. And, finally, July 31, your Exhibit 6, 1956?

A. Yes, sir. \$20,095.

Q. Now, was all of the \$11,792 you talked of as being owed to officers on December 31, 1953, owed to Kenneth Nelson?

A. It was.

Q. You have already testified that the \$15,024 on December 31, 1954, was owed entirely to Kenneth Nelson, right, sir?

A. That's right, sir.

Q. How about the other three amounts you have given me?

A. Only to Kenneth Nelson.

Q. Now, between December 31, 1953, and July 31, 1956, what is the greatest amount of money at any given time that Kenneth Nelson had loaned to Gilbertville Trucking and which was outstanding?

A. The \$20,095 as of July 31, 1956.

Q. I didn't ask my question clearly, I guess, Mr. Solomon. I am not referring now to the figures you have just given me. I am asking you whether you can tell me how much, [fol. 254] what is the greatest amount at any given time, whether it is the middle of the year, beginning or end, that Kenneth Nelson lent to Gilbertville?

A. From the facts I have with me, I could not give you that; but, I would say approximately: it could not have exceeded this figure of \$20,000.

Q. Now, if I were to suggest to you that on November 9, 1954, Gilbertville Trucking Company owed Kenneth Nelson \$25,000, you would not be in a position to tell me whether it was true or not, is that right?

A. That is correct; I would doubt it.

Miss Kelley: Can I have that question and answer again?

Mr. Keenan: I may be—well, perhaps the reporter will read it.

Exam. Baumgartner: Purely a hypothetical one.

[Question and answer read by the reporter.]

By Mr. Keenan:

Q. Mr. Solomon, do you keep Kenneth Nelson's personal financial records for him?

A. I prepare his tax return, yes, sir.

Q. And do you keep custody of the material which is necessary to provide the information for that tax return? In other words, his records of loans made and debts incurred, that kind of thing?

A. No, it would not be in there, no; just for his income tax: income.

Q. You don't yourself have custody of his records of [fol. 255] debts incurred and loans made?

A. No, I do not.

Q. You are able to obtain the records reflecting the loans made and debts which are due to Gilbertville Trucking?

A. That is correct.

Q. And there is a ledger maintained in the accounts of Gilbertville Trucking Company with Kenneth Nelson, is there not?

A. That is correct.

Q. And running your eye down that ledger you would be able to determine very, very rapidly what is the greatest amount that has ever been outstanding owed to Kenneth Nelson by Gilbertville Trucking, right?

A. That is correct.

Q. And you would be able to give us the date?

A. That's right.

Q. Now, do you know whether any director or officer of Gilbertville Trucking, other than Kenneth Nelson, has lent it money?

A. No other officer has loaned it any money.

Q. Has any other director done so?

A. No, none of them.

Q. Where is the ledger kept which reflects the debts owed by Gilbertville to Kenneth Nelson?

Miss Kelley: I object. The materiality of that and the pettiness of some of this inquiry—

Exam. Baumgartner: Well, I'll tell you, if he does answer [fol. 256] it is a harmless answer, so to save time let's get the answer.

The Witness: At the main—

Miss Kelley: It is such—

The Witness: —offices of the corporation. It is kept in Ellington, Connecticut, as I explained before.

Q. Yes, and in whose custody is it?

A. The bookkeeper of Gilbertville.

Q. What is his name?

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[fol. 259] The Witness: The bookkeeper's name is Mary Kane. However, if you need the general ledger I can get it.

Exam. Baumgartner: That is enough. Just answer the question.

Mr. Keenan: Thank you, sir.

Exam. Baumgartner: We are getting into too many details now without your adding a whole lot more.

The Witness: Yes, sir.

By Mr. Keenan:

Q. Now, Mr. Solomon, since the middle of 1948 have you been personally acquainted with each of Mrs. Linnea Nelson's children?

A. Since, as I testified earlier, January of 1949.

Q. I'm sorry, January of '49?

A. That's right.

Q. You have been thus acquainted, right?

A. Right, sir.

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[fol. 263] Q. Did Oscar Chilberg perform any services for L. Nelson and Sons after May 14, 1948?

Miss Kelley: To what date?

Mr. Keenan: Any date.

The Witness: He sold his stock, as you know, in '51, so naturally he was receiving compensation until '51, at least.

Q. After June 30, 1951, did Mr. Oscar Chilberg perform any services for L. Nelson and Sons?

A. As an employee?

[fol. 264] Q. In any capacity whatsoever?

A. He operates a garage that does repair work for Nelsons.

Q. How much compensation since June 30, 1951, has Oscar Chilberg received from L. Nelson and Sons?

Miss Kelley: I object to the form of that question.

Exam. Baumgartner: For services performed?

Mr. Keenan: Mr. Examiner, how am I to determine whether it is for services performed, or not? I am at the mercy of the witness if I ask it that way. I respectfully

submit this is cross-examination. The witness is then in a position to say he received one dollar for services performed and he received the rest of it as a gift.

Miss Kelley: Mr. Examiner, the witness is trying to answer, and I think everybody in this room is convinced that he is trying to answer these questions honestly. Now, he has said that Oscar Chilberg was connected with a garage. If we go into exact detail there, we have to know all the entire setup about this garage, whether it's an individual or a corporation, or what it is. If there were some services performed, they would have been garage services, a separate corporation. What is the materiality of that in this proceeding?

Exam. Baumgartner: Well, the witness said that he operated a garage, so we assume from that answer that he as an individual operated that garage, and there is nothing to indicate to the contrary; and we must assume, further, that he received some compensation for services performed [fol. 265] in the garage, or by the garage employees, for the Nelson Company. Now, what counsel wants to know is how much he received since—

Mr. Keenan: June 30, 1951, if the Examiner please.

The Witness: I could not give you—he ran a business, and I could not say how much, exactly, repairs he did just for Nelson's.

By Mr. Keenan:

Q. Of course, I didn't want to know how much repairs he did for Nelson. What I wanted to know is how much money Nelson paid him.

A. Yes. I could not.

Q. Could you answer that?

A. No. From his sales record here, which I am taking from his tax return, I could not tell just how much is from Nelson's.

Q. I see. Do you have any records of L. Nelson and Sons which will permit you to determine how much L. Nelson and Sons paid to Oscar Chilberg?

A. I do not have any here with me.

Q. I see there is a ledger account which reflects that information?

A. Accounts payable, that's right.

Q. And that is in the same type of custody we have discussed before with reference to the other ledger account?

A. That's right.

Q. What is the nature of the services rendered by Oscar Chilberg to L. Nelson and Sons? You have told us he ran a garage. What did he use that garage for to benefit L. [fol. 266] Nelson and Sons when he rendered services?

A. Repairs of Nelson's equipment.

Q. Where is the garage situation?

A. In Philadelphia.

Q. And have you any way of telling how many units of Nelson's equipment he serviced a month or a week or a year, on the average?

A. The bills at the office, at Nelson's office, would indicate that.

Q. But, you don't have that information right now?

A. No, I do not.

Q. When did that service of repairing Nelson's equipment, when did that service begin by Oscar Chilberg?

Miss Kelley: I object, Mr. Examiner. There we go again into immaterial facts.

Exam. Baumgartner: I will let the question stand.

The Witness: Business started some time in 1952.

Q. What is the name of the business, please?

A. Lehigh Garage.

Q. L-e-h-i-g-h?

A. That is right, sir.

Q. What is the address?

A. Twenty-six—

Miss Kelley: I object.

Exam. Baumgartner: Well, I think he is entitled to get [fol. 267] the address.

Mr. Keenan: May the witness proceed?

Exam. Baumgartner: Yes, I have already ruled.

Q. Go ahead, Mr. Solomon.

A. 2064 East Lehigh Avenue, Philadelphia, Pennsylvania.

Q. That it: two-o-sixty-four?

A. That's right.

Q. Have you any means of accurately determining how much of the gross revenue of Lehigh Garage was derived from L. Nelson and Sons?

Miss Kelley: I object.

Exam. Baumgartner: He answered that question in the negative a while ago.

The Witness: That's right, sir.

Q. And, finally, is L. Nelson and Sons still doing business with the Lehigh Garage?

Miss Kelley: I object.

Exam. Baumgartner: I will permit the question to stand.

Q. Will you answer, sir?

A. He is—he owns the—

Exam. Baumgartner: The question is: do you know.

The Witness: If he is doing—

Exam. Baumgartner: Is he still doing business—

The Witness: In a category, yes.

Q. What do you mean by: in the category?

[fol. 268] Exam. Baumgartner: No, the question—

The Witness: Yes.

Exam. Baumgartner: —whether Oscar Nelson as owner and operator of this garage is still doing business with L. Nelson and Sons Company, is that right?

Mr. Keenan: Well, not quite, sir. What I meant to find out, first of all, is whether the garage is still doing business with L. Nelson and then whether Oscar owned the garage?

The Witness: It is still doing business with Nelson.

Q. What is Oscar's present relationship with the garage?

A. He still owns the garage.

Q. Is he the sole owner of it?

A. That is right, sir.

Q. Beyond the services rendered to L. Nelson and Company by the Lehigh Garage, has Oscar Chilberg rendered any services to L. Nelson and Company since June 30, 1951?

Miss Kelley: That is repetitious. I object. It's a repetitious question.

Mr. Keenan: I claim it.

Exam. Baumgartner: No, I don't think it is quite repetitious.

Q. Do you have the question in mind?

A. No, I don't. Would you want to restate it?

Q. Since June 30, 1951, other than the services rendered [fol. 269] to L. Nelson and Company by the Lehigh Garage, has Oscar Chilberg rendered any services to L. Nelson and Company?

A. No other services, no.

Q. Has he received compensation from L. Nelson and Company other than the compensation received by the Lehigh Garage?

A. He has not received any compensation.

Q. And I am speaking, of course—

A. From Nelson's.

Q. —between the date: June 30, 1951, and the present.

A. No, sir.

Q. Now, Mr. Solomon, at any time subsequent to September 22, 1951, has Kenneth Nelson rendered any services to L. Nelson and Sons?

A. Since '51?

Q. Since September 22, 1951?

A. Yes, he has.

Q. Would you proceed as you were going to, to tell me what those services are?

A. As a free-lance tariff consultant.

Mr. Barrett: I didn't hear, Mr. Solomon.

The Witness: Free-lance tariff consultant.

Miss Kelley: Mr. Examiner, I submit this was all gone into this morning.

The Witness: You mentioned—

Mr. Keenan: I agree that is repetitious. My next question [fol. 270] won't be:

Q. What is a free-lance tariff consultant?

A. An independent, just the same as myself, someone who holds himself out to do a certain classified work for someone else.

Q. I understand, I think, Mr. Solomon, the type of work

you do. Will you tell me what type of work a tariff consultant does?

Miss Kelley: I object.

Exam. Baumgartner: Well, answer it if you know.

The Witness: I am not qualified to answer what a tariff consultant does.

Q. Who was responsible in the management of L. Nelson and Sons for making the decision to hire Kenneth Nelson as a free-lance tariff consultant?

A. That would be under Charles Chilberg and other stockholders there.

Q. I see. Did Charles Chilberg ever seek your advice on this particular management decision?

A. No, sir.

Q. And did Charles Chilberg ever advise you as to his reasons for making this management decision?

Miss Kelley: I object.

Mr. Keenan: I think the witness' answer is going to be no, so why don't you let him answer?

Exam. Baumgartner: Did he?

[fol. 271] Miss Kelley: Are we going to keep this up for weeks?

The Witness: Would you restate it, please?

By Mr. Keenan:

Q. Did Charles Chilberg ever state to you his reasons for making this management decision?

A. No, he did not.

Q. And is Charles Chilberg in the room now?

A. Yes, he is.

Q. Now, how much compensation has Kenneth Nelson received from L. Nelson and Sons since September 22, 1951?

Miss Kelley: I object unless the question is tied down to a particular period.

Mr. Keenan: The period I refer to is from September 22, 1951, until the present date. The examiner will possibly recall that September 22, 1951, is the date when Kenneth Nelson purported, according to the witness, to resign as officer and director.

Miss Kelley: I object to the phraseology used by Mr. Keenan.

Exam. Baumgartner: What part of it?

Miss Kelley: Well, his sarcasm is wholly unnecessary.

Mr. Keenan: Well, if the Examiner please, I am hardly going to admit that he resigned at this stage of the game.

Exam. Baumgartner: What is the question, Miss Reporter?

[The question was read by the reporter as follows: "Now, how much compensation has Kenneth Nelson received from [fol. 272] L. Nelson and Sons since September 22, 1951?"]

Exam. Baumgartner: Do you know the answer to that question, Mr. Witness?

The Witness: It appears from his tax return there was one year here, there was one year, in 1952, that he did receive compensation.

By Mr. Keenan:

Q. There was one year here, in 1952, when he did receive compensation. How much compensation did he receive from L. Nelson and Sons?

A. \$15,650.

Exam. Baumgartner: From L. Nelson and Company?

The Witness: That's right, sir.

Exam. Baumgartner: During the year 1952?

The Witness: 1952.

By Mr. Keenan:

Q. Mr. Solomon, is there any coincidence between the fact that he received that compensation and the fact that his average loan to Gilbertville Trucking Company between '53 and '56 has been about \$15,000?

A. There would be no coincidence. If you recall, as of March 1, 1953, the corporation owed Kenneth Nelson approximately \$11,000.

Q. As of March 1, '53, who owed Kenneth Nelson \$11,000—oh, I see, you're talking about Gilbertville?

A. I testified earlier to that figure.

Q. You are correct, sir. I do recall that. Now, did you

[fol. 273] exhaust your knowledge concerning Kenneth Nelson's services to L. Nelson and Sons when you told us that he served as a tariff consultant? In other words, did he do anything else besides serving as a tariff consultant between September 22, 1951, and the present date for L. Nelson and Sons? Is the question clear?

A. Yes, it is.

Q. Will you answer it?

A. I believe only as tariff consultant.

Q. You believe—are you in some doubt about that?

Miss Kelley: I object to the witness being hounded. He further, I believe, tied his answer down previously to the year 1952.

The Witness: That's right.

Miss Kelley: And it is repetitions.

Exam. Baumgartner: That was a matter of compensation tied down to '52, but not performance of services.

Q. Are you sure, or is there some doubt about it?

A. Would you mind restating the question?

Exam. Baumgartner: If you don't know, Mr. Witness, say so.

The Witness: Yes.

Exam. Baumgartner: It is easy to say you don't know, if you don't.

Q. All I am seeking to do is find out with accuracy what the state of your knowledge is, Mr. Solomon.

A. Would you mind restating your question?

[fol. 274] Q. Did Kenneth Nelson provide anything but tariff consultant's services to L. Nelson and Sons between September 22, 1951, and the present date?

A. I would not know.

Q. By that do you mean you don't think he did, or you don't know whether he did?

A. I don't know whether he did.

Q. It is therefore possible that he did provide services—

Miss Kelley: I object to the characterization.

Exam. Baumgartner: I think that it is a little bit argumentative, Mr. Keenan.

Mr. Keenan: I only want to make sure—

Exam. Baumgartner: It is just an argumentative question now. Why don't you go on with your examination.

Mr. Keenan: I didn't want to argue. I just want to make sure I understand the witness.

Exam. Baumgartner: It started out to be an argumentative question.

By Mr. Keenan:

Q. Now, you have told us that Kenneth Nelson received some money from L. Nelson and Sons during the year 1952. Do you know what, if any, amounts of money Kenneth Nelson received from L. Nelson and Sons between September 22, 1951, and December 31, 1951?

Exam. Baumgartner: Do you know the answer to that?

The Witness: I don't offhand, unless I looked at his tax [fol. 275] return here.

Mr. Keenan: The witness has to refer to his records.

Miss Kelley: Wouldn't you be able to tell a particular period of time?

Mr. Keenan: Objection to counsel asking a question on redirect during cross.

Exam. Baumgartner: Reserve your question for rebuttal.

Miss Kelley: It's only for clarification. We all know an income tax covers a whole year. He is asking for a portion of a year. It's obvious—

Exam. Baumgartner: The witness can take care of himself.

Miss Kelley: I know he can.

Mr. Keenan: I agree, Mr. Examiner.

Miss Kelley: You recall Mr. Keenan said this morning he had one more hour. We have had three or four hours of this—

Mr. Keenan: We might have even more at the rate we are going.

Miss Kelley: I am not going to work nights if this is the type of thing we are going to have all day long.

Mr. Keenan: Well, if the Examiner please, I will be more than happy to assent to any motion Miss Kelley cares to make to withdraw the application in this proceeding.

Exam. Baumgartner: I think that is a bit of sarcasm, and I don't think Miss Kelley's sarcasm is in order, either. I think both counsel should be a little bit more courteous, one to the other.

Mr. Keenan: I apologize, Mr. Examiner, and I will attempt to be guided by your suggestion.

[fol. 276] By Mr. Keenan:

Q. My question was, sir: do you know what, if any, compensation Kenneth Nelson received from L. Nelson and Sons between September 22, 1951, and December 31, 1951?

A. I wouldn't know unless I looked at my tax return.

Q. Will you please do so?

Exam. Baumgartner: How can you ascertain from the tax return?

The Witness: I can't tell between a period.

Exam. Baumgartner: The answer is you don't know?

The Witness: I don't know.

Q. Mr. Solomon, again, that information is available from the ledgers we have been talking about?

A. Right; yes, sir.

Q. What, if any, compensation did Kenneth Nelson receive from L. Nelson and Sons between January 31, 1953, and the present date?

Exam. Baumgartner: I think the witness answered that question once.

Miss Kelley: I think he did, too.

Exam. Baumgartner: He said he received \$15,000, some-odd, in the year 1952.

Mr. Keenan: I didn't understand the witness as being exhausted. If he was, then that is the end of it.

Exam. Baumgartner: That was my understanding, that that was the sum total of what he received during that period.

[fol. 277] Isn't that what you said, Mr. Witness?

The Witness: Well, I said it was, as far as 1952. I mean, I mentioned the year.

Exam. Baumgartner: Did he receive any more?

The Witness: In 1953, yes, sir.

Exam. Baumgartner: Well, answer the question, then.

By Mr. Keenan:

Q. Will you tell us how much?

Exam. Baumgartner: How much did he receive in 1953 from L. Nelson and Sons? If you can tell from your records. I don't want you guessing or speculating.

The Witness: \$13,829.09.

Q. And, finally, 1954?

A. None.

Q. 1955?

A. None.

Q. In so far as you have current data?

A. None.

Mr. Barrett: Mr. Examiner, may I butt in here so I won't lose sight of it. There was a question I was going to ask. In 1953, what period does that \$13,000 cover? For the entire year?

The Witness: That is for the entire year. I wouldn't know for what period, now.

Mr. Barrett: Thank you.

By Mr. Keenan:

Q. Charles Chilberg is still a stockholder and director [fol. 278] of L. Nelson and Sons?

A. That is correct, sir.

Q. Clifford Nelson is in the same status?

A. That is right, sir.

Q. In what capacity was Howard Chilberg originally employed by L. Nelson and Sons?

Miss Kelley: I object. I believe that is in the record at least three times, Mr. Examiner.

Mr. Keenan: If I recall, the Examiner, as a matter of fact, advised me to determine that information at one stage of the proceeding, and I promised to try to do so.

Exam. Baumgartner: What is the question, Miss Reporter? Part of it was blanked out on me.

[The question was read by the reporter as follows: "In what capacity was Howard Chilberg originally employed by L. Nelson and Sons?"]

Mr. Keenan: If the Examiner will recall, Howard Chilberg is that member of the family concerning whom I was mistaken. I called him a director and Miss Kelley picked me up on it and said he was an employee, and the Examiner stated at that time: "Do you want to find out what the nature of his employment was."

Exam. Baumgartner: You may answer the question.

The Witness: Howard Chilberg?

Exam. Baumgartner: Yes.

The Witness: Yes, he was office manager.

[fol. 279] Q. And did he remain office manager until—well, when did he stop being office manager?—is a short way to handle this.

A. Yes. On October 15, 1951.

Q. And thereafter, in other words, after October 15, 1951, did he perform any services for L. Nelson and Sons?

A. No, he did not.

Q. After October 15, 1951, did he receive any compensation from L. Nelson and Sons?

A. No, he would not.

Q. You say he would not. Do you know as a fact he did not?

A. He is a civilian employee with the Navy. He returned to his old job, and he would not.

Exam. Baumgartner: The question is: did he receive any compensation?

The Witness: He did not.

Exam. Baumgartner: That is all.

Q. At any time has Mrs. Nyberg rendered services to L. Nelson and Sons?

A. No, she never has.

Q. At any time has she received compensation from L. Nelson and Sons, other than dividends owed her as a stockholder?

A. No, she has never received.

Q. Are the same facts true of Rita Carlson?

A. No, they are not. In other words Greta Carlson did render services there for various periods.

[fol. 280] Q. Well, did she render any services to L. Nelson and Sons during the year 1953? I am interested in the period: '53 until the present, Mr. Solomon, because it is in March of '53 that Kenneth Nelson acquired Gilbertville.

A. The last year that she rendered any services to Nelson is in '53, sir.

Q. When did she begin thus to render services in '53, and when did she stop?

A. I couldn't give the exact dates. I'm taking it from her tax return.

Q. What was the nature of the services rendered?

A. Yes. She's an office clerk.

Q. What is the total amount of compensation she received for such services?

A. In 1953: \$1,550.

Q. After 1953, did she render any services to L. Nelson and Sons?

A. None whatever.

Q. And she therefore also received no compensation from L. Nelson, right?

A. That's right.

Q. You understood me to be referring to Greta Carlson, did you not?

A. Yes.

Q. Even though I mispronounced her name and called her Rita.

[fol. 281] Q. Phyllis Nelson: has she ever rendered any services to L. Nelson and Sons?

A. None; none whatsoever.

Q. Has she ever received any compensation?

A. None.

Q. Mr. Kashady—what is his first name?

A. John.

Q. John Kashady—

Miss Kelley: I object, Mr. Examiner. This is definitely not in connection with the finance proceeding.

Mr. Keenan: If the Examiner will recall, we ran down a roster of people and have accurately determined who

has and who has not got a stock interest in L. Nelson and Sons, and who has and who hasn't got a stock interest in Gilbertville.

Miss Kelley: What is the materiality in a finance case as to whether the stockholders of Gilbertville ever rendered any services for Nelson?

Exam. Baumgartner: I will permit the question to stand.

Q. The question is, Mr. Solomon, has Mr. Kashady ever rendered any services to L. Nelson and Sons?

A. I wouldn't know that.

Q. When you say you would not know that, do you mean you do not know that?

A. I do not know that.

Q. Has he received compensation from Nelson?

[fol. 282] A. He has not.

Q. From L. Nelson—

A. Ever since Gilbertville started. I don't know if he ever was an employee before of Nelson's; if he ever at any time was in the employ of Nelson's, I do not know.

Q. But you are sure he was not employed by L. Nelson and Sons after March 1, 1953?

A. That, I am positive of that.

Q. Why are you positive of that, whereas you are not sure whether he was such an employee during February of 1953?

A. I mean—I mean, I would definitely know where the man was working, who he was working for.

Q. I guess maybe I had better ask you what the source of your information is concerning Mr. Kashady's employment status?

A. Only from my personal knowledge now I am giving it to you.

Q. How did you acquire that knowledge?

A. Just by observation.

Q. You didn't see him around L. Nelson's place, is that right?

A. No, I wouldn't know him, I believe.

Q. I still didn't hear that answer?

A. I would not know him. I mean, I was never properly introduced to the man, and the people who do visit Nelson's I do know.

Q. Well, let's see if I understand, what you are saying correctly is: you were never introduced to the man prior to [fol. 283] a given date, is that right?

A. That's right, sir.

Q. When did you first meet him?

A. I met him at Kenneth Nelson's house one day.

Q. Approximately when, as best you can fix it—approximately?

A. In 1954.

Q. Early, late, or in the middle?

Miss Kelley: Oh, I object, Mr. Examiner.

The Witness: I have a few hundred accounts; and, boy, this is pretty hard.

Q. If you can't answer, by all means say so.

Miss Kelley: I object to the question.

Exam. Baumgartner: Mr. Witness, I think you would save your self a lot of trouble if you do just say: I don't know.

The Witness: I don't know.

Exam. Baumgartner: When you don't know, say you don't know, and you will save yourself so much anxiety and trouble.

The Witness: I don't know.

Mr. Keenan: I agree, Mr. Examiner.

By Mr. Keenan:

Q. You don't know when you met him. You just know you met him some time in 1954?

A. That's right, sir, '53 or '54.

Q. Now, let us see. You have told me, if I recall correctly, that he has rendered no services to L. Nelson and Sons from 1953 on, right, so far as you know?

[fol. 284] A. That's right.

Q. Do you know whether he has received any compensation from L. Nelson and Sons from 1953 on?

A. I would know that answer: that he did not receive any compensation.

Q. Mr. Solomon, perhaps we can shorten this examination if I tell you I have difficulty when you use the words: "I

would know," or "I would not know," because it leaves room for doubt as to what you mean. If you would say: "I do know," or "I don't know," why, then, I don't have to ask you any more questions about it.

Now my question is: do you know whether he received any compensation from L. Nelson and Sons from January 1953 until the present date?

A. I would not know that. The reason is—

Exam. Baumgartner: Mr. Witness, let me explain—

Miss Kelley: He says: I do not know.

Exam. Baumgartner: —that word "would" you are using is a colloquial expression, and people fall into the habit of saying "I would not know" when they really should say, "I do not know." That is what he is getting at, and that is what I am getting at.

Q. I guess what you mean when you say "I would not know," is that you are not in a position to know?

A. That is correct.

Q. I inferred that you meant that, but I still want to know exactly what the state of your knowledge is, regardless of [fol. 285] how readily you can inquire. Do you know whether or not Kashady received any compensation from L. Nelson and Sons from January 1953 until the present date, please?

A. I do not know.

Q. Paroshinsky: the same questions with regard to the same periods?

A. I do not—I change that. Mr. Paroshinsky never has received any compensation other than for legal services that he does render.

Exam. Baumgartner: To whom?

The Witness: Mr. Paroshinsky is an attorney for Gilbertville.

Q. Right, sir; if we can go back over this just a little bit: Has he ever rendered any service of any nature to L. Nelson Sons from January 1953 until the present date?

A. He never has.

Q. Has he received any compensation from L. Nelson Sons from January 1953 until the present date?

A. He never has.

Q. Now—

Exam. Baumgartner: Mr. Keenan, would it inconvenience you if we took a five-minute recess?

Mr. Keenan: No, sir.

Exam. Baumgartner: All right, we will take a five-minute recess.

[fol. 286] [A five-minute recess was taken.]

Exam. Baumgartner: Ladies and gentlemen, we will please come to order. Mr. Keenan, will you please proceed.

Mr. Keenan: Yes, sir. Thank you.

By Mr. Keenan:

Q. Mr. Solomon, subsequent to June 30, 1951, did Oscar Chilberg render any services to Gilbertville Trucking Company, Inc.?

Miss Kelley: June 30, 1951?

Mr. Keenan: That's right. If I recall correctly, that is the date on which Oscar Chilberg transferred his fifty shares of stock of L. Nelson and Sons?

Miss Kelley: I object, Mr. Examiner. I believe it is very clear in the record that Kenneth Nelson had no connection with Gilbertville Trucking Company until March of 1953.

Exam. Baumgartner: Well, he may answer.

Miss Kelley: I submit, Mr. Solomon has had a difficult day, and with figures thrown that way, I believe they are set deliberately in an effort to confuse the witness, and I don't think it is a fair question when it is clear on the record.

Mr. Keenan: I have more confidence in the witness than counsel does. He doesn't look confused to me.

Miss Kelley: If you had been questioned all day, I believe you would be pretty tired.

Exam. Baumgartner: Let's proceed.

By Mr. Keenan:

Q. The question is, Mr. Solomon: subsequent to June 30, [fol. 287] 1951, did Oscar Chilberg, so far as your records will permit you to determine, render any services to Gilbertville Trucking Company?

A. He has not rendered any services to Gilbertville Trucking Company.

Q. Just to be abundantly clear about that, it therefore follows that the Lehigh Garage has rendered no services to Gilbertville Trucking Company, right?

A. That would be correct, yes; Lehigh Garage would not perform any services for Gilbertville. It is located in Philadelphia.

Q. Yes, the Lehigh Garage has not performed any services for Gilbertville, right?

A. That is correct.

Q. Now, at any time subsequent to March 1, 1953, has Charles Chilberg rendered any services—no, withdraw that question.

A. At any time subsequent to June 30, 1951, has Oscar Chilberg received any compensation from Gilbertville Trucking Company, Inc.?

Q. That is the other half of the coin that I neglected to inquire about.

A. He has not received any compensation from Gilbertville.

Q. At any time subsequent to March 1, 1953, has Charles Chilberg rendered any services to Gilbertville Trucking Company?

A. No, he never has.

Q. Any compensation received from Gilbertville Truck- [fol. 288] ing Company?

A. To my knowledge Charles Chilberg has never received any compensation from Gilbertville.

Q. At any time subsequent to March 1, 1953, has Clifford Nelson rendered any services to Gilbertville Trucking Company?

A. He never has.

Q. Compensation received?

A. He never has received any compensation from Gilbertville.

Q. Has Howard Chilberg, since March 1, 1953, rendered any services to Gilbertville Trucking or received compensation therefrom?

A. He has not received any compensation from Gilbertville Trucking Company. Did you say Oscar Herbert?

Q. No, I said Howard.

A. Howard: none at all.

Exam. Baumgartner: The answer is no to both questions?

The Witness: That's right.

Q. Now, is the answer no to both questions with respect to Mrs. Nyberg and Greta Carlson?

A. That is correct, sir.

Q. Has Phyllis Nelson ever rendered services to Gilbertville?

A. No, she hasn't.

Q. Just so I get this picture straight: Oscar, Charles, Kenneth, Clifford, Howard, and Ruth are all children of Mrs. Linnea Nelson, right?

[fol. 289] A. Yes. Did you mention seven names there?

Q. I mentioned six names. I should have added Rita.

A. That's right, sir.

Q. Or Greta; and, of course, Phyllis is a daughter-in-law of Mrs. Linnea Nelson?

A. Yes, sir.

Q. So that the only people we have been discussing so far who are not related to Mrs. Linnea Nelson are Kashady and Paroshinsky, right?

A. That is right, sir.

Q. Now, Mr. Solomon, part of the information concerning the prices at which these Nelson and Sons shares were transferred is in the record. However, it is in the record in such fashion that my notes don't reflect it clearly. I should like very rapidly to invite your attention to the dates of the transfer and ask you to give me the price of the transfer and the transferor and transferee?

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[fol. 291] Miss Kelley: It was a hundred dollars per share for the original shares that Kenneth Nelson and Oscar Chilberg owned; and then the appraised price, Mr. Solomon, will you confirm it, wasn't that practically a hundred dollars, a few dollars less?

The Witness: Eighty-two dollars and fifty-two cents per share.

By Mr. Keenan:

Q. Then, just to button the thing up, on June 30, '51, when Oscar sold his stock, he sold it at a hundred dollars a share, right?

A. That is right.

Q. And when Kenneth sold his on September 22, 1951, he sold it at a hundred dollars a share? And on January 24, 1953, when stock was distributed from the estate to each of the seven children, it was distributed at the value of—

A. Eighty-two dollars and fifty cents, times forty-two—in other words, \$3,465—

[fol. 292] Miss Kelley: That's it.

The Witness: —to Kenneth Nelson.

Q. Now, at some time prior to the distribution of the stock from the estate to the legatees, which took place January 24, 1953, you testified on direct that Oscar and Kenneth, quote, had arranged, unquote, to sell to somebody else the shares they were due to receive from the estate. Do I recall your testimony correct? Would you like the reporter to read that?

A. When did that happen, yesterday?

Exam. Baumgartner: He is asking if you would like to have the question read back to you.

Mr. Keenan: I think he has it in mind.

The Witness: I have the question in mind, but I think his type of question is that of some question yesterday.

Exam. Baumgartner: Oh, yes, I think it was gone into yesterday.

Q. Do I restate it accurately, Mr. Solomon, or would you like to change it?

A. Restate it again, please?

Exam. Baumgartner: Read the question, Miss Reporter.

[The question was read by the reporter as follows: "Now, at some time prior to the distribution of the stock from the estate to the legatees, which took place January 24, 1953, you testified on direct that Oscar and Kenneth, quote, had arranged, unquote, to sell to somebody else the shares they

[fol. 293] were due to receive from the estate. Do I recall your testimony correctly?"]

The Witness: That is correct.

Q. What did you mean by "had arranged"? In other words, will you tell me what events transpired as a result of which that arrangement came into being?

A. Yes. When the stock would be transferred from the estate to the individual heir, the heir would then sell it.

Q. My question was: will you tell me what events transpired as the result of which that arrangement came into being.

Miss Kelley: He has just answered the question. It is the same one.

Exam. Baumgartner: He is not asking about the agreement. He is asking what was done pursuant to these arrangements. As a result of these arrangements what happened?

Mr. Keenan: No, sir. What I wanted to know was what events constituted the arrangement that the witness is talking about. Who said what to whom?

Miss Kelley: Oh, that was—

Mr. Keenan: He says there's an arrangement and I don't know what it is.

Exam. Baumgartner: Do you know what was said?

The Witness: No, I don't know what was said.

Exam. Baumgartner: Do you know the details of the arrangement?

[fol. 294] The Witness: When a person sold his original fifty shares, Mr. Examiner, it was then agreed that when the person would receive any from the estate, he would then sell the shares he received from the estate.

Exam. Baumgartner: I know, but counsel is asking for more than that. He wants to know what was said, how the arrangement came about?

The Witness: I do not know.

Exam. Baumgartner: How it was accomplished?

The Witness: I do not know.

Mr. Keenan: I think I can shorten this up.

Q. What is the source of your information concerning this arrangement? How did you find out about the arrangement, Mr. Solomon?

A. I was told.

Q. Who told you?

A. I do not know who told me.

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[fol. 295] By Mr. Keenan:

Q. Now, my notes also reflect like testimony by you, Mr. Solomon, concerning a, quote, arrangement, unquote, that Howard Chilberg made for such a transfer of his inherited shares. Is your testimony the same about those?

A. I believe I never said that about Howard Chilberg.

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[fol. 296] Q. If you ever did testify that Howard Chilberg had entered into such an arrangement, you desire to correct such testimony now, is that right?

A. I would desire to correct it, if I ever did.

Q. If you had made it?

A. Yes.

Q. Now, when the application in this proceeding was filed in August of 1955, Greta Carlson had forty-two shares of the stock of L. Nelson, right?

A. Correct.

Q. To that extent, Exhibit A attached to the application, constitutes a misrepresentation, correct?

Miss Kelley: I object.

Mr. Keenan: Excuse me. I withdraw that remark.

Q. To that extent, Exhibit A attached to the application is incomplete, is that correct?

Miss Kelley: I'm sorry.

[fol. 297] Q. In other words, Exhibit A, Paragraph 4, does not set forth the name and business address of the ten principal stockholders of L. Nelson, does it?

Miss Kelley: Mr. Examiner, may I agree that it does not, and that that is an error on my part in failing to have it recorded.

Exam. Baumgartner: In what respect is it deficient?

Miss Kelley: Simply that on Page 5 of the application, Mr. Examiner, it asks for the ten principal stockholders, and I listed the names of Charles Chilberg and Clifford J. L. Nelson and neglected to show the third stockholder, Greta Carlson, who owns forty-two shares.

Exam. Baumgartner: Is that the only deficiency?

Miss Kelley: That is the only deficiency.

Exam. Baumgartner: Does that satisfy you?

Mr. Keenan: It does. I understand counsel stipulates the deficiency. I don't need to ask the witness about it.

Exam. Baumgartner: You desire that the application be amended, Miss Kelley?

Miss Kelley: Yes, I would appreciate it if it could be amended in that respect.

Mr. Barrett: No objections.

Exam. Baumgartner: Then we will regard the application as amended, to show how many shares to—

Miss Kelley: Forty-two shares. It is the inheritance [fol. 98] that Greta Carlson received.

Exam. Baumgartner: Greta Carlson?

Miss Kelley: From her mother's estate.

Exam. Baumgartner: Greta Carlson, forty-two shares, Page 5.

Miss Kelley: Mr. Examiner, one other point. Of course, I failed to also show there the six shares held by The L. Nelson and Sons—

Exam. Baumgartner: Well, it says the ten principal stockholders. I would worry about the six shares.

By Mr. Keenan:

Q. Now Exhibit A-5 attached to the application reflects notes payable to officers amounting to some \$9,700. To whom is that owed?

A. Clifford Nelson and Charles Chilberg.

Miss Kelley: Mr. Examiner, for identification can we have the record show that Exhibit A-5 is the balance sheet statement of The L. Nelson and Sons Transportation Company as of May 31, 1957?

Exam. Baumgartner: Exhibit A-5 to the application?

Miss Kelley: Yes.

Mr. Keenan: Counsel is correct, Mr. Examiner.

Miss Kelley: Just for clarity, so that it will show in the record.

Q. Now, at any time subsequent to June 30, 1951, was L. Nelson and Sons in debt to any extent to Oscar Chilberg?

A. Subsequent to—did you give the date of the sale of [fol. 299] the stock? Is that what you did?

Q. Yes, I did, sir.

A. In debt to him.

Q. Did he loan it any money?

A. Monies he had loaned it prior to the sale of his stock, they owed him money for.

Q. I see. On June 30, 1951, how much money did L. Nelson owe Oscar Chilberg?

A. I do not have the records here with me, but I could always get them.

Q. Again, a ledger account with L. Nelson and Sons would reflect that information, would it not?

A. Correct.

Q. Now, you have told us where those ledger accounts are kept for Gilbertville Trucking and in whose custody they are, and I should appreciate the same information with respect to the like ledgers reflecting the financial accounts of L. Nelson and Sons.

Miss Kelley: Mr. Examiner, to save a lot of confusion, I wonder if we couldn't ask if Mr. Solomon has knowledge or request Mr. Keenan to ask if Mr. Solomon has knowledge if any sums then owed Oscar Chilberg were paid and if he knows when they were paid. It seems it would simplify his question.

Mr. Keenan: I have no objection to asking that question—

Exam. Baumgartner: Will you please put that question. [fol. 300] Mr. Keenan: I will, Mr. Examiner, but may my pending question be answered, though?

Miss Kelley: I object to the pending question.

Exam. Baumgartner: He may answer it.

Q. Will you answer, sir?

Exam. Baumgartner: Who has custody of the ledger and where is it kept?

The Witness: The bookkeeper of Nelson.

Exam. Baumgartner: Name?

The Witness: Name: Dorothy Darcy.

Exam. Baumgartner: Where is it kept?

The Witness: It is at the main office at Ellington, Connecticut.

Q. Same address as the Gilbertville books, right?

A. Right, sir.

Q. Now the question the Examiner wanted you to answer, and counsel for the applicant, was: have all debts which L. Nelson and Sons owed to Oscar Chilberg been repaid; and, if so, when?

A. Have been repaid?

Q. Yes.

A. From the information I have on here, there was nothing due to Oscar Herbert Chilberg as of December 31, 1953.

Q. What is the source of your information?

A. I am taking it right from an annual report I prepared.

Q. Annual report concerning the financial affairs of whom?

[fol. 301] A. Of Nelson, I am talking about.

Exam. Baumgartner: Annual report to whom; Interstate Commerce Commission?

The Witness: Oh, no. I'm sorry. It is to the directors of the Nelson Corporation.

Q. Oh, you have a report as of December 31, 1953, which indicates what, if any, members of Linnea Nelson's family had loaned money outstanding to L. Nelson and Sons, do you?

A. That is right.

Q. Will you tell me who owed what to L. Nelson and Sons from Linnea Nelson's family on December 31, 1953? That will shortcut a fair amount of questioning.

Exam. Baumgartner: Can you answer, Mr. Witness, whether the Nelson Company owed any monies to any member of Mrs. Linnea Nelson's family as of that date? If the Nelson Company did owe any one of them, or more, how much did it owe them? Can you answer that question?

The Witness: I can answer that, Mr. Examiner.

Exam. Baumgartner: Did you say you can?

The Witness: I can.

Exam. Baumgartner: You can?

The Witness: Yes, sir.

Exam. Baumgartner: Will you please do it as briefly as you can.

The Witness: The sum due by the Nelson Corporation to [fol. 302] Charles Chilberg as of December 31, 1953, \$10,279.92; sum due to Clifford Nelson, \$6,340.22.

Mr. Barrett: I don't like to interrupt, but I missed that one, Mr. Solomon, the last figure.

The Witness: Clifford Nelson, \$6,340.22; Greta Nelson—name now is Greta Nelson Carlson—\$5,032.77; sum due to Kenneth Nelson, \$3,401.24; Ruth Nyberg, \$3,562.67; and Gustave Nelson—that's the father—\$3,210.28.

By Mr. Keenan:

Q. Have you a similar compilation for the year 1954?

Miss Kelley: Mr. Examiner, before we depart from that, just for clarity in the record, can we have Mr. Solomon asked if he knows the basis of these amounts?

Exam. Baumgartner: I have the same question in my mind. Do you mind if I ask it?

Mr. Keenan: Not a bit, sir. I would appreciate it.

Exam. Baumgartner: What was the basis for the indebtedness of the company with respect to each one of these persons or creditors whom you have named?

The Witness: What basis do I have.

Exam. Baumgartner: No. Out of what did this obligation or indebtedness arise, this indebtedness to each one of these persons whom you have named? Did it arise from a loan or from some other sort of transaction?

The Witness: It is a combination of a loan and services [fol. 303] that these persons have rendered to the corporation when they were employed by the corporation.

By Mr. Keenan:

Q. Well, in other words, it represents both money which it paid the corporation in return for the corporation's notes, and also accrued wages?

A. Accrued wages, yes.

Q. Accrued wages only, or were there notes in the picture, too?

A. There were notes in the picture, yes.

Q. Got any breakdown as to how much was owed each of these people by way of accrued wages?

A. Oh, no, I could not tell you that.

Mr. Keenan: Is the Examiner satisfied?

Exam. Baumgartner: I am satisfied, yes.

Q. Have you a similar compilation for the year 1954?

A. I have.

Q. Will you give us the same figures?

A. As of December 31, 1954, the sum due by Nelson to Charles Chilberg: \$660.35; sum due to Clifford Nelson: \$2,217.78; sum due to Greta Carlson—Greta Nelson Carlson—\$4,801.73; sum due to Ruth Nyberg: \$3,562.67.

Q. On December 31, 1954, was anything owed to Kenneth Nelson?

A. Nothing owed to Kenneth Nelson.

Q. How about Gustave?

A. Nothing owed to Gustave.

Q. Finally, have you any information for the period [fol. 304] which has elapsed between December 31, 1954—withdraw that remark.

Have you the same information for December 31, 1955?

The Witness: The figure I have for December 31, 1955, is a consolidated figure, Mr. Keenan.

Q. Yes, sir?

A. It is not broken down to the individual, but I do know it is merely for the two stockholders, due to the two stockholders, how much to each one.

Q. To Charles Chilberg and to Cliff Nelson?

A. That's right, sir, no one else.

Q. Will you tell us what the figure is?

A. \$16,297.98 is the sum due as of December 31, 1955, to Charles Chilberg and Clifford Nelson.

Q. Of course on March 1, 1953; when Kenneth Nelson bought 100 shares of Gilbertville, no application was filed with the Commission for the Commission's approval of that transaction, was there?

Miss Kelley: I object. I don't know whether that is anything that Mr. Solomon can have knowledge of.

[fol. 306] Exam. Baumgartner: Is there anything in the Act which requires that a non-motor carrier who acquires control of a motor carrier file an application for approval?

Mr. Keenan: No, sir.

Exam. Baumgartner: There is not?

Mr. Keenan: No, sir. The question is addressed only to the contention that at the time Kenneth Nelson acquired the stock of Gilbertville Trucking Company, within the meaning of Section 5(6) of the Act, he was affiliated with L. Nelson and Sons.

Exam. Baumgartner: Have you proved that?

Mr. Keenan: No, sir.

Exam. Baumgartner: Then I can't permit the question to be answered. That is an additional reason.

[fol. 311] By Mr. Keenan:

Q. Mr. Solomon, after January 5, 1950 will you give me the name of the person who was the Chief Executive Officer of L. Nelson & Sons Transportation Company?

A. Charles Chilberg.

Q. And has he remained Chief Executive Officer of L. Nelson & Sons Transportation Company ever since?

A. He has.

Q. At any time did Kenneth Nelson serve as Chief Executive Officer of L. Nelson & Sons to your knowledge?

A. Prior to the sale of the stock he was Assistant Treasurer.

Q. Oh, I see. Where are the files kept reflecting the results of traffic solicitations made by L. Nelson & Sons?

Miss Kelley: I object. That's repetitious.

By Mr. Keenan:

Q. Let me simply ask you, are the files kept, the salesmen's files for Nelson & Sons, kept at Ellington, Connecticut?

Miss Kelley: I object to the question because it does [fol. 312] not involve the finance case. Mr. Solomon is not a file clerk to know some of these matters. It's beyond the scope of direct examination.

Exam. Baumgartner: I think he may answer, Miss Kelley.

The Witness: Wherever the files are, they are kept, if they are, in Ellington.

Exam. Baumgartner: You were asked a question where are they kept, that's all.

By Mr. Keenan:

Q. Are they kept at Ellington, the salesmen's files?

A. I don't know.

Q. And if I asked you the same question with regard to Gilbertville Trucking?

A. I do not know.

Q. Please tell me when the first conference occurred at which you were present when the topic of a purchase of Gilbertville Trucking by L. Nelson came up for discussion.

A. I believe I testified January of 1953.

Q. Who was there, please? First of all, where was it?

A. First, Kenneth Nelson phoned me relative to the—

Exam. Baumgartner: Just tell us where it was, Mr. Solomon. Don't go into any other detail. Just tell us where it was.

The Witness: Either at his home or at the place in Ellington.

Exam. Baumgartner: Where is his home?
 [fol. 313] The Witness: Manchester, Connecticut.

By Mr. Keenan:

Q. And by the place in Ellington, you mean the offices of L. Nelson & Sons in Ellington?

A. Correct.

Q. At that time did Gilbertville Trucking have offices at Ellington?

A. No, they did not.

Q. Who was present at that conference early in January?

A. Kenneth Nelson only.

Q. Kenneth Nelson and yourself?

A. That's right.

Q. When did the first conference occur between Kenneth Nelson and anyone who owned or represented the owners of Gilbertville Trucking Company at which you were present?

A. July 24, 1953.

Q. And who was present at that conference—withdraw that question.

Mr. Solomon, I'm confused now because my records lead me to believe that Mr. Nelson bought Gilbertville on March 1, 1953 and now you're telling me with reference to a conference that took place July, 1953 after the sale.

A. Excuse me. I understood you to say that I was present with the sellers of the stock and the purchaser of the stock.

Q. Let me restate my question again and attempt to be a little clearer about it. Will you tell me when the first conference occurred at which the sale of Gilbertville to Kenneth Nelson was a topic of discussion at which you were present and at which a representative of the seller was present or the seller.

A. In April of 1953.

Q. And where was that, please?

A. At attorney Samuel Zandan, who holds his office jointly with Francis J. Mahoney, accountant, both representatives of Gilbertville Trucking Company, Incorporated.

Q. Yes, sir. All I want to know is where:

A. 31 Elm Street, Springfield, Massachusetts.

Q. And who was there? Who was at that conference? You were there, right?

A. Right, and Mr. Zandan.

Q. Kenneth Nelson was there?

A. No, he was not.

Q. Will you tell me who was there? You, Mr. Zandan, and who else?

A. It was in Mr. Zandan's office with Mr. Mahoney, but Mr. Mahoney was away, and I was there with an associate of his and myself.

Q. Associate of whom?

A. Of Mr. Mahoney.

Q. And that associate was representing who, the seller?

A. That's right.

Q. And what was that associate's name?

[fol. 315] A. Give me a few minutes and I could look through my files and I can find his name.

Q. I don't think I will trouble you to do that. At that time had the contract of sale been drafted?

A. Yes.

Q. And what was the purpose of the conference in April of 1953 at Mr. Zandan's office?

A. To determine the good accounts receivable, the cash, the prepaid items, and the liabilities.

Q. I take it, therefore, that you had not been present at a conference where the seller was represented and where the drafting of the contract of sale had been discussed?

A. Correct, I was not present.

Q. Now, have you a copy of that contract for sale with you?

A. I have.

Q. May I see one, please?

A. This is the original draft.

Miss Kelley: It's a signed original.

By Mr. Keenan:

[fol. 316] Q. Mr. Solomon, by the contract which you just showed me signed by Wilfred Vachon and Kenneth Nelson,

Mr. Vachon undertakes to transfer or to deliver some stock of Gilbertville Trucking to some escrow agents. Do your records permit you to tell me the date on which this stock [fol. 317] transfer physically took place?

A. I testified yesterday it took place July 24, 1953 at the time of the final accounting.

Q. Did you state yesterday when the initial cash payment by the buyer, Kenneth Nelson, of \$10,000 was made?

A. I did not.

Q. Will you give me the date on which Mr. Nelson gave Mr. Vachon \$10,000?

A. Yes, sir.

[fol. 322] By Mr. Keenan:

Q. Well, the question actually which was asked at the beginning was when was that cash payment made?

A. March 3, 1953, \$10,000.

Q. And in what form was the payment made?

A. By check.

Q. A check made by whom?

A. I do not know.

Q. No, I didn't ask the question correctly. Who signed the check? Who drew the check?

A. I do not know.

Q. Do you know who made the payment?

A. Yes.

Q. Mr. Nelson?

A. Kenneth Nelson.

Q. How do you know Kenneth Nelson made the payment if you don't know who drew the check? Was he an endorser on the check?

A. No. He had borrowed money from the bank on March 2, an affidavit I'm holding in my hand, on March 3 he paid the \$10,000. I do not know, however, if he took the sum that he borrowed from the bank, placed it in a bank account, and then withdrew a check, I do not know that.

[fol. 323] Q. The source of the funds he used to pay that \$10,000 was a bank loan, however?

A. Correct.

Q. I see. Thank you. Did Mr. Nelson and Mr. Oscar Chilberg execute, as the contract provided, a note for \$10,000 payable to Wilfred Vachon, and did they do it on or before May 1, 1953 as provided for in the contract?

A. They did that before May 1 of 1953.

Q. Have you already told us when that note was executed and delivered to Mr. Vachon?

A. I believe the purchase agreement you have there in front of you states that it took place on March 3, 1953.

Q. The words that have caught my eye in the agreement, Mr. Solomon, are these: "This note is to be executed on May 1, 1953." The agreement purports to be dated March 2, 1953.

A. Then you will notice it's signed March 3 on the last page.

Q. At any rate it refers to a note that's to be executed in the future as of the date it was signed. My inquiry is do you know or do your records permit you to determine when that note was executed and delivered to Mr. Vachon? First of all, I should ask you was it executed?

A. Yes.

Q. Can you tell me when it was executed and when it was delivered to Mr. Vachon?

A. I cannot tell you when it was executed.

[fol. 324] Q. You do not have a copy of it, do you?

A. Of the note?

Q. Yes.

A. No. It has been paid since.

Q. It has been paid since?

A. Yes.

Miss Kelley: Mr. Examiner, I believe that the record is going to be quite confused by reference to this contract, and I ask leave at this time to submit it as an exhibit because I feel if, in reference to the contract, it can be referred to by exhibit number, it's going to clarify the record with reference to the particular agreement that Mr. Keenan has discussed.

Mr. Keenan: I join in Miss Kelley's request.

Mr. Mueller: I also concur in the request.

Exam. Baumgartner: The agreement dated March 2, 1953 by and between Wilfred J. Vachon and Kenneth Nelson providing for the sale of certain shares of stock in the Gilbertville Trucking Company to Mr. Nelson will be marked as Exhibit No. 22 for identification.

(The document above referred to as Applicant's Exhibit No. 22, Witness Solomon, was marked for identification.)

By Mr. Keenan:

Q. This will facilitate examination. Now the question I asked you originally about a \$10,000 cash payment, that is the payment, is it not, Mr. Solomon, that is provided [fol. 325] for or rather that is acknowledged on the second page of Exhibit No. 22, the third paragraph?

A. Correct.

Q. And the promissory note I talked to you about just now, is it not, that's referred to in the paragraph following on Page 2 of Exhibit 22?

A. Correct.

Q. Now, finally, if I recall correctly you do not know the date on which that note was executed?

A. Correct.

Q. You do, however, believe that it was executed?

A. I do.

Q. And why do you believe that?

A. I know that payments were made on the note directly to Mr. Vachon.

Q. I see. How do you know that the document itself was executed aside from the fact that you know that Kenneth Nelson made some payments to Mr. Vachon?

Miss Kelley: I object. That's immaterial. Mr. Solomon has gone over all his knowledge with respect to the note.

Mr. Keenan: I had marked in my notes a little item on cross-examination to find out what the source of his information was. He didn't tell us.

Exam. Baumgartner: You may answer.

The Witness: May I have the question restated.

[fol. 326] By Mr. Keenan:

Q. How do you know the note was executed other than the fact that you know Mr. Kenneth Nelson made some payments to Mr. Vachon?

A. That would be my only basis.

Q. That's the only basis for believing the note was issued?

A. Yes.

Q. Didn't Mr. Nelson ever tell you it was executed?

A. He most likely did.

Q. But you don't recall precisely if he did?

A. That's right. I'm doing it from my memory. There's no question in my mind there was a note.

Q. Well, however clear your mind may be on the matter, you have told us everything there is to prove there was such a note?

A. Correct.

Q. You haven't left anything out?

A. Correct.

Q. When were payments completed on the note?

A. From memory it was completed within one year of August, 1954.

Q. Therefore, August, 1955 it was completed, by August, 1955?

A. Oh, I'm sorry. It was August of 1954 it was completed by, meaning one year from August of 1953.

Q. And do you know the form which payments on that note took? In other words, were those checks?

[fol. 327] A. Absolutely, checks.

Q. You're sure of that? You saw them?

A. Positive.

Q. And who drew them? Who was the drawer?

A. Definitely it would be Kenneth Nelson.

Q. You say it would be. Do you know as a fact, or is this an inference you're making?

A. I'm doing it from memory as you can see. There is no reason why it should be anyone else other than Kenneth Nelson because it was a Gilbertville check.

Q. I see. However—

A. He's the only one who signs it.

Q. However, has anyone ever told you who signed those checks?

A. No, no one ever told me who signed the check.

Q. Had you ever seen any of the checks before they were dispatched?

A. I never saw any of the checks before they were dispatched, no.

Miss Kelley: To clean it up, Mr. Examiner, may I ask Mr. Solomon if he saw them after they were cancelled?

Mr. Keenan: I certainly agree.

The Witness: In the course of my audit I would see the checks that are cancelled.

By Mr. Keenan:

Q. Did you see these particular checks we're talking about, Mr. Solomon?

[fol. 328] A. I sure did.

Q. And who drew them when you saw them?

A. It could only be Kenneth Nelson.

Q. Do you recall that he drew them? Well, maybe we can simplify this thing. Did you see them in Mr. Nelson's financial records?

A. Correct. Not Mr. Nelson's financial records. In the financial records of Gilbertville Trucking Company, Incorporated.

Q. You saw these checks in the records of Gilbertville Trucking Corporation after they had been honored and cancelled, right?

A. Correct.

Q. When checks have been honored and cancelled, they are returned by the bank to the drawer?

A. Correct.

Q. And if you saw them in the records of the Gilbertville Trucking Company, would it not follow that the Gilbertville Trucking Company was the drawer?

A. I stated before that Gilbertville Trucking was the drawer.

Q. Then those payments on that note was made from funds in the treasury of Gilbertville Trucking?

A. Correct.

Exam. Baumgartner: Who signed on behalf of Gilbertville Trucking?

The Witness: Kenneth Nelson. He's the only one per-
[fol. 329] mitted to sign checks.

By Mr. Keenan:

Q. You have told us, have you not, that Mr. Vachon transferred and delivered stock certificates to Mr. Nelson and in turn Mr. Nelson transferred and delivered them to escrow agents?

A. Correct.

Q. These escrow agents were attorneys Zandan, and Paroshinsky.

A. Correct.

Q. And thereafter did the escrow agents transfer and deliver the stock certificates of Gilbertville Trucking, Inc., to Mr. Nelson?

A. Correct.

Q. When did that take place?

A. July 24, 1953.

Q. Now did you assist—you stated that Kenneth Nelson borrowed some money from the bank in order to make the \$10,000 cash payment that you and I have been just referring to. Did you assist Mr. Nelson in obtaining that loan?

A. I did not.

Q. Did you advise him on the course of his obtaining it, on the subject of his obtaining it?

A. I do not recall.

Q. I will withdraw the question. How do you know he obtained a bank loan?

A. I have in front of me, which I repeat, an affidavit.
[fol. 330] Q. May I see it?

Miss Kelley: May I see it first?

Well, this is on the record or not, I just want to make a comment I believe Mr. Solomon may be incorrect in what he considers an affidavit.

Is the statement sworn to?

The Witness: It's not sworn to, but it's from the President of the bank.

Mr. Keenan: Can we go off the record for a minute?

Exam. Baumgartner: Yes, off the record.

(Discussion off the record.)

Exam. Baumgartner: All right, back on the record.

You may read it into the record.

By Mr. Keenan:

Q. Mr. Solomon, you told me that you have a letter from a bank which is a source of your information concerning Mr. Nelson's borrowings, is that correct?

A. Correct.

Q. That letter was sent you in the regular course of business as a result of your soliciting this information from the bank by mail?

A. Correct.

Q. You recognize the letter from the bank as being an authentic communication duly signed?

A. Correct.

Q. You have received other communications from the [fol. 331] bank in the past?

A. Yes, I have.

Q. Would you read it?

A. It's a letter from the First National Bank of Manchester, Manchester, Connecticut, dated September 14, 1956.

"To Whom It May Concern: This is to certify that on March 2, 1953 Kenneth Nelson jointly with Oscar H. Chilberg borrowed from this bank on demand \$30,000 and on March 5, 1953 paid \$15,000 leaving a balance due of \$15,000. On April 30, 1953 Kenneth Nelson jointly with Oscar H. Chilberg borrowed \$15,000 on demand from this bank. At this writing Kenneth Nelson jointly with Oscar H. Chilberg are, therefore, indebted to this bank in the total sum of \$30,000. Very truly yours, Shirley Harrington, President."

Q. Would you give us the date of that letter?

A. September 14, 1956.

Q. Is that the full extent of your information concerning Mr. Nelson's bank borrowings?

A. May I have that question repeated?

Q. Let me withdraw it. It's too broad. Do you know what, if any, security Mr. Nelson gave the bank for these loans?

A. I do not know.

Q. Do you know whether these loans were secured in any way?

A. I do not know.

[fol. 332] Q. You have stated, sir, that Oscar Chilberg on January 19, 1954 resigned as Treasurer of Gilbertville Trucking Company and he transferred his 48 shares of stock in Gilbertville, 24 of them to Phyllis Nelson and 24 of them to John Kashady. Do I recall your testimony correctly?

A. As I understand your question, January, 1954?

Q. January 19, 1954.

A. On April 1, 1954 I testified yesterday that Oscar Herbert Chilberg resigned as Treasurer and he gave 24 shares; that is, he gave all 48 shares to Kenneth Nelson.

Q. Oh, I see. And thereafter Kenneth Nelson transferred 24 of them to his wife, Phyllis?

A. Correct.

Q. And 24 of them to John Kashady?

A. Correct.

Q. Have you already told us the date on which that transfer took place? Was that also on April 1, 1954?

Miss Kelley: Mr. Examiner, while Mr. Solomon is checking that—wait just a moment, Mr. Solomon—I wondered if we could have Mr. Solomon asked at this point for the sake of clarity in the record as to whether or not Oscar Chilberg had paid any consideration for those 24 shares. Where it is being discussed, if it could be brought up now it would make it simpler as far as the record is concerned.

Mr. Keenan: It's all right with me.

[fol. 333] Exam. Baumgartner: What's the pending question?

By Mr. Keenan:

Q. When did Nelson make the transfer to his wife and John Kashady?

A. In the minute book or the stock transfer book on hand here—I do not know the exact date.

Q. Are they here?

A. I see the minute book in Kenneth Nelson's hand right now.

Q. Will you refer to it so that you can give me an answer?

Miss Kelley: Rather than delay, can we have Kenneth check it so we'll find the page and furnish it later?

By Mr. Keenan:

Q. Miss Kelley suggested that you tell us where Oscar Chilberg got the money—no, what consideration, if any, Oscar Chilberg paid for his 48 shares.

A. Oscar Chilberg never did pay in anything for the shares.

Exam. Baumgartner: Were they a gift?

Mr. Keenan: I think I can square this away, Mr. Examiner.

The Witness: The money for the transaction arose from the bank loan, Mr. Examiner. All he did was sign the note.

By Mr. Keenan:

Q. Well, now, of course Oscar Chilberg was not a party to the contract of sale as a result of which the stock was acquired from Mr. Vachon. I'm referring to Exhibit 22, is that right?

Miss Kelley: It's obvious.

By Mr. Keenan:

Q. He didn't sign it, Mr. Solomon? I just want it to be clear on the record.

[fol. 334] Miss Kelley: The agreement shows it to be between Mr. Vachon and Mr. Nelson, Mr. Examiner.

Mr. Keenan: I understand counsel stipulates. You needn't answer the question, sir.

By Mr. Keenan:

Q. That would mean to me at sometime Mr. Nelson transferred 48 shares of stock to Oscar Chilberg, right? My question to you is basically, do you know of any such transfer?

A. I do not know.

Q. When you stated on direct examination that Oscar Chilberg at one time held 48 shares of Gilbertville Trucking Company stock, will you tell me why you said that?

A. It stated in the stock transfer book of the corporation.

Q. And that same stock transfer book would show us what the prior transfers were between Oscar and Nelson, right?

A. Definitely.

Miss Kelley: For the purpose of clarifying this, Mr. Examiner, I am willing to stipulate that the 48 shares of the stock of the Gilbertville Trucking Company were issued to Oscar Chilberg, he not paying any consideration for them, that upon issuance to him of that number of shares, plus the 51 shares, I believe; that were issued to Kenneth Nelson, that both stock certificates were then pledged in escrow as security for the \$10,000 note which was jointly executed by Oscar Chilberg and Kenneth Nelson and given to Mr. Vachon, the previous stockholder of Gilbertville. [fol. 335] Then, upon payment of that note, that \$10,000 note, the 48 shares to Oscar Chilberg as well as the shares to Kenneth Nelson were released.

Exam. Baumgartner: And returned to him?

Miss Kelley: That's right, and at that time it went into the possession of Kenneth Nelson because Oscar Chilberg had paid no consideration other than lending his name as a co-maker.

Mr. Keenan: I will accept that stipulation, Mr. Examiner.

Exam. Baumgartner: Very well. I don't know whether you want to confirm it with Mr. Mueller.

Miss Kelley: Incidentally, I have checked the record book of Gilbertville Trucking Company and find that Oscar Chilberg resigned April 1, 1954, he resigned as director and treasurer of Gilbertville Trucking Company and the res-

ignation to take effect immediately. The record also shows that in a meeting held on April 9, 1954, John Kashady was elected as a director, and Kenneth Nelson becoming the treasurer of Gilbertville Trucking Company on that date.

Mr. Keenan: That's April 9th, 1954?

Miss Kelley: April 9, 1954. We do not have the certificates with us, but this is the best evidence we have in the hearing room if you care to see the resignation and the meeting I have no objection.

Mr. Keenan: I will stipulate that Miss Kelley's statement is the truth, if the Examiner cares to accept the stipulation. [fol. 336] Exam. Baumgartner: Do you other gentlemen agree with Mr. Keenan?

Mr. Barrett: I have no objection.

Mr. Mueller: I have no objection.

By Mr. Keenan:

Q. Now I would like to find out when that 24 shares of stock were transferred from Kenneth Nelson to John Kashady in view of the fact that John Kashady became director, I believe, it was on April 9, 1954. It's likely that it's the date of the stock transfer, but I would like to nail it down.

Miss Kelley: Do you know, Mr. Solomon?

The Witness: I do not know.

By Mr. Keenan:

Q. Well, you said you've got a transfer or stock book?

Miss Kelley: I told you there was nothing else in the book except what I described. We don't have the other available in the room.

By Mr. Keenan:

Q. Mr. Solomon, what's the source of your confidence that it is true that at sometime or another, Mr. Kashady acquired 24 shares of Gilbertville Trucking?

A. I had seen the stock transfer book.

Q. But you don't recall when the transfer was made?

A. Correct.

Q. You don't recall what the stock transfer book reflected as to when the transfer was made?

[fol. 337] A. Correct.

Q. And you haven't brought that stock transfer book with you?

A. I did not.

Mr. Keenan: May we go off the record just a minute?

Exam. Baumgartner: Off the record.

(Discussion off the record.)

Exam. Baumgartner: We are on the record now.

By Mr. Keenan:

Q. Mr. Solomon, you stated that this stock transfer, the date of which we can't determine, from Mr. Nelson to Mr. Kashady was made in order to increase Mr. Kashady's prestige? Do I recall your testimony substantially?

A. Correct.

Q. Now, how do you know that? Did somebody tell you that that was the purpose of the stock transfer?

A. Correct.

Q. Who told you?

A. Kenneth Nelson.

Q. When did he do so?

A. I believe I testified to this too prior, that it was at Mr. Kenneth Nelson's house sometime in 1954.

Q. He told you this at his house sometime in 1954?

A. Yes.

Q. Is that the only time he told you that or did he tell it to you subsequently?

Miss Kelley: I object to the searching on an immaterial [fol. 338] point, Mr. Examiner.

The Witness: I do not know if he told it to me again.

By Mr. Keenan:

Q. Here's the only reason I ask you this, sir: You have stated two or three times on direct and I'm a little bit

puzzled why you remember this detail of motivation. If it was told you once at the time you can't remember, what has caused it to stick in your mind? What's the significance of it?

A. It was at Kenneth Nelson's house, and usually I see him at either my office or at his office, and at this particular time Mr. Kashady was there; and because of Mr. Kashady, I can easily identify the motive for giving Mr. Kashady the stock because it was said to me right then and there in the presence of Mr. Kashady why it was given to him.

Q. He is not in the room now, is he?

A. No.

Q. Now, when you say, "lend him prestige," may I inquire prestige with whom, his fellow workers?

A. I testified prior that he is a supervisor of the Gilbertville, Massachusetts terminal. It's giving him a title with his fellow employees, customers.

Q. Mr. Nelson wanted to give him the stock because it would lend him prestige. In other words, it would cause his subordinates and his associates in the business to think more highly of him, is that correct?

[fol. 339] A. Correct.

Q. And also it would cause the customers to think more highly of him?

A. Correct.

Exam. Baumgartner: Where did you get that information, Mr. Solomon?

The Witness: At Kenneth Nelson's house in the presence—

Exam. Baumgartner: He told you this?

The Witness: Correct, in the presence of Mr. Kashady.

By Mr. Keenan:

Q. Did Mr. Nelson tell you how it was going to be noised about the customers that Mr. Kashady had 24 shares?

Miss Kelley: I object.

Exam. Baumgartner: I think you are going into too many details here. My goodness, let's proceed with something more important.

By Mr. Keenan:

Q. Mr. Kashady paid nothing for those shares?

A. Correct.

Q. He still has them?

A. Correct.

Miss Kelley: Wait a minute. Did you get that question?

The Witness: He still has not paid them.

By Mr. Keenan:

Q. My first question was he has paid nothing, and your answer was no, and my next question was does he still have the 24 shares?

A. I do not know.

[fol. 340] Miss Kelley: May I object.

Exam. Baumgartner: Just a moment.

Miss Kelley: Do you mean is he still the registered holder? Do you mean by that question that Mr. Kashady is still the registered holder of 24 shares, or do you mean does Mr. Kashady have the certificate in his own hand by that question? There are two ways it can be interpreted.

Mr. Keenan: Evidently there's a distinction here.

By Mr. Keenan:

Q. Do you know whether he has the physical possession of the certificates?

Exam. Baumgartner: If you know.

The Witness: I do not know.

By Mr. Keenan:

Q. Do you know whether he is the registered holder on the corporation's books, on Gilbertville's books?

A. On my last audit he appeared as the registered holder.

Q. Of 24 shares?

A. Of 24 shares.

Q. When was your last audit?

A. An audit of that nature probably took place in March of 1956.

Q. Now, has Gilbertville declared any dividends in the last year or two?

A. No.

Q. At sometime you testified on direct you advised Kenneth Nelson to speak to Miss Kelley concerning a merger [fol. 341] between Gilbertville and L. Nelson & Sons. Do you recall that?

A. Yes, I do.

Q. Will you tell me why you suggested he speak to Miss Kelley?

Miss Kelley: I object to just the form there as to—oh, strike it.

The Witness: I suggested to Kenneth Nelson that he speak with Miss Kelley for the purpose of—if there was a possibility of a merger with the Nelson Corporation.

Exam. Baumgartner: Speak to whom?

The Witness: To Miss Kelley.

Exam. Baumgartner: I have forgotten, who is Miss Kelley?

Mr. Keenan: She's the attorney of the case.

Exam. Baumgartner: Oh, this is Miss Kelley.

Miss Kelley: Yes, sir.

By Mr. Keenan:

Q. Do I infer correctly from your answer, Mr. Solomon, that you expected that Miss Kelley would be able to speak in behalf of L. Nelson & Sons on this thing?

A. Oh, no.

Q. I confess it's still not clear in my mind why you sent Mr. Nelson to Miss Kelley.

A. I confess I know nothing of legal problems or of any ICC regulations, and that is the reason why I sent Kenneth Nelson to see Miss Kelley.

Q. You sent him to Miss Kelley because you wanted to get the ICC regulatory, legal problems out of the way, is that it?

[fol. 342] A. If she would discuss the problem with him and if there was any chance of a merger.

Q. Then what?

Miss Kelley: I think that completes the answer.

Exam. Baumgartner: I think that finishes the answer.

Mr. Keenan: The witness' syntax has me a little confused.

Exam. Baumgartner: Taking that into account, I think his answer is complete.

The Witness: Someone's got to make the application.

By Mr. Keenan:

Q. Now finally, sir, Exhibit 9 is a document to me which I am not entirely sure of. On direct examination you told us that you wanted to make use of the ratio between the net book of Nelson and the net book of Gilbertville. Do I recall that correctly?

A. Correct, sir.

Q. Well, my crippled mathematics led me to believe that that ratio was something like 16.4 percent.

A. As of what date.

Q. July 31, 1956.

A. I believe you will find the percentage to be 15.63.

Q. That's very likely true.

A. Yes, sir.

Q. Now on Exhibit 9 you have a figure 78 shares.

A. Yes, sir.

Q. Will you tell me the arithmetic that was used to get [fol. 343] that figure of 78?

A. 500 shares that Nelson now has, and if you multiply 500 shares by 15.63 you will then receive 78 shares.

Q. If you multiply it by point?

A. By 15.63.

Q. If I multiply 500 by 15?

Exam. Baumgartner: He's talking about 15.63 per cent.

The Witness: Then take off four places.

By Mr. Keenan:

Q. Yes, sir. Now, finally to make it perfectly clear on the record, is it true that you derived this figure of 15.63 per cent by dividing 24,588 by 157,443?

A. Correct.

Q. And all three of those figures I have just mentioned are set forth on Exhibit 9?

A. Correct.

Q. No, 15.63 per cent is not.

A. You're right.

Q. Now could I take a look at that green sheet you were using?

Mr. Keenan: May I have Miss Kelley's permission to do so?

Miss Kelley: I gave my permission the other night, Mr. Keenan.

By Mr. Keenan:

Q. When you testified about Exhibit 11—

Mr. Keenan: Mr. Examiner, may we show on the record that the green sheet is a memorandum which Mr. Solomon [fol. 344] had in his possession.

Exam. Baumgartner: When?

Miss Kelley: During the course of his testimony on direct which he had prepared himself.

By Mr. Keenan:

Q. Mr. Solomon, your testimony on direct reflected that the Applicants expect to accomplish a saving in the expense of tires and tubes after the merger. What's the source of your information concerning that?

Miss Kelley: Mr. Examiner, may I inquire from Mr. Solomon if he needs his memorandum in order to give some answers.

The Witness: I spoke to both Kenneth Nelson and Charles Chilberg.

By Mr. Keenan:

Q. And they told you direct?

A. That's right.

Q. The sole source of your information is what they told you?

A. Correct.

Q. To shorten up this examination, is it true that the source of your information concerning the economies that can be achieved as reflected on Exhibit 11 is in each case information they gave you?

A. No, it is not.

Q. Will you point out to me the exceptions to that?

A. Definitely. The savings in insurance I came across myself in the examination of two different companies.

Q. That's Item 4550?

[fol. 345] Exam. Baumgartner: 4500 you mean?

The Witness: 4500 is correct, sir.

Exam. Baumgartner: Off the record,

(Discussion off the record.)

Exam. Baumgartner: Back on the record.

By Mr. Keenan:

Q. Mr. Solomon, do I understand correctly that you are the person who reached the conclusion without the assistance of anybody else that the savings under Account 4500 would be realized by the merger?

A. After sometime ago noticing the difference in the cargo insurance rates, I then spoke to either Kenneth Nelson and Charles Chilberg if it was correct and they stated it is.

Q. If what was correct?

A. The difference in the rates.

Exam. Baumgartner: You mean the savings?

The Witness: That's correct.

By Mr. Keenan:

Q. Any other exceptions to it?

A. Yes, the administrative and general, that's Account No. 4600 is entirely my own which reflects a savings of \$12,061. It's very obvious for me to see that.

Q. All right. Now you talked, do I recall correctly, about releasing office help to secure better control of costs? That's

part of your administrative and general savings. Can you answer that yes or no?

A. I didn't say anything about releasing office help. I [fol. 346] mean that the person who probably is doing a certain function in the office then could be doing something that they're not doing now. For instance, keeping better control of costs.

Q. Well, have you assigned any kind of a monetary value to the savings that would result from such better control of costs?

A. I have not.

Q. What's the printing matter that you expect to eliminate and achieve a saving of \$13,357?

A. The saving—you didn't mean to say that. You meant \$2,000, didn't you?

Q. Thank you, sir.

A. Mr. Keenan meant to say that of \$13,357 why did I specify here that 20 per cent or \$2,671.40 would be saved on printing matter.

Q. I thank the witness for the correction and guidance. Would you answer the question, please.

A. The \$13,000 of office supplies are actually in the majority of cases duplications that are purchased by Nelson and also for Gilbertville. If they bought the quantity as one company, there certainly would be a savings. For instance, on envelopes, stationery, all your bills.

Q. Well, Mr. Solomon—

A. These are minimum savings.

Q. Yes, Mr. Solomon. How did you arrive at this figure of 20 per cent? Did you do any arithmetic or is it a judgment figure? [fol. 347]

A. Judgment figure.

Exam. Baumgartner: Where does that figure appear that you're discussing now?

Mr. Keenan: Under Account 4600.

Exam. Baumgartner: That's the difference of 106,000 and—

Mr. Keenan: I'd rather get my copy of Exhibit 11.

The Witness calculated total savings of \$12,061.

The Witness: That's right.

Mr. Keenan: One of the items in that \$12,061 is \$2,671.40 reflected by the witness memorandum and I think possibly included in his testimony on direct that would be saved as a result of reducing duplication of office supply purchases and printing. That represents 20 per cent of the present annual expense of such office supplies, namely, \$13,357. . .

The Witness: Correction. That is not the annual figure. That's a 7-month figure.

Mr. Keenan: A 7-month figure?

The Witness: Yes, sir.

Miss Kelley: The \$13,000 figure you gave was the total figure, is that it, at the present time?

Mr. Keenan: That's right.

Miss Kelley: Thank you.

By Mr. Keenan:

Q. Well, actually what I'm trying to find out, Mr. Solomon, is what's the basis for a judgment that 20 per [fol. 348] cent is on economic duplication right now? Have you inventoried the present office supplies.

A. I have not inventoried the present office supplies.

Q. Do you know how many office pads are used a month or year, how many envelopes or sheets of stationery?

A. I don't.

Miss Kelley: I object, Mr. Examiner.

Exam. Baumgartner: Mr. Keenan, I think the witness said that 20 per cent was a judgment figure. Now I don't know if it will profit us anything if you go into all this detail that you're now driving at.

Mr. Keenan: All right, sir.

By Mr. Keenan:

Q. What's your experience in making such judgments, Mr. Solomon?

Miss Kelley: I object. Mr. Solomon is an accountant.

The Witness: I have been 27 years a public accountant. I am an industrial engineer.

By Mr. Keenan:

Q. That's it?

A. That would be it.

Q. Now what's the 7-month cost until July 31, 1956 incurred by both Gilbertville and by Nelson in preparing bills and checking bills on interline movements?

A. Did you say what's the total cost?

Q. Yes, for 7 months.

A. I do not know. I didn't compute this in the same [fol. 349] relation as I computed the printing matter. I didn't base it on that.

Q. Now you have computed there would be a saving of \$8,800 during the 7-month period ending July 31, 1956 in the preparing of bills and checking of bills on interline movements.

A. Yes.

Q. Will you tell me what the basis of that computation is?

A. There are several girls who now do the preparation of bills and the checking of bills. I know definitely that three of them may be eliminated.

Q. And why do you know that definitely?

A. That is, when they terminate their present positions, the positions would not be filled again.

Miss Kelley: Mr. Solomon, just for the sake of clarification, when you say, "terminate their present positions," what do you mean by that?

The Witness: As the turnover of help—

Mr. Keenan: Oh, I see.

Exam. Baumgartner: The positions would not be refilled?

The Witness: That's right, the positions would not be refilled.

By Mr. Keenan:

Q. Why not? In other words, what's the different condition that's going to attain in the future that doesn't exist now?

A. On interlines, for instance, the bill has to be made up. If they were merged, there wouldn't be two sets of bills [fol. 350] being made up.

Q. Interlines between whom, between Gilbertville and Nelson?

A. Correct.

Q. Oh, you mean Gilbertville and Nelson are doing so much interline business that you—

A. No, that is part of the answer.

Q. What's the rest of it?

A. The duplication of the two different girls, for instance, for two different companies doing the same type of work. It could take place by one girl or a girl and a half.

Q. Let's take those things one at a time. What percentage of Nelson's daily pros represent interlines with Gilbertville, do you know?

A. Offhand, I could not give you that answer.

Q. Have you ever found out what the answer to that question was?

Miss Kelley: I object. This is again such detail.

Exam. Baumgartner: This is detail, Mr. Keenan. I think we ought to try to cut this short now, or we're going to be here until midnight. I promise we are going to get this hearing completed by Friday night.

Mr. Keenan: The witness has made some estimates. I don't see why we are not entitled to find out what that saving is.

Exam. Baumgartner: If you must have it, let's get it on [Vol. 351] the record, but I don't see what it profits you to go into all this fine detail. You're not going to refer to it in your brief, I'll bet you.

By Mr. Keenan:

Q. For the period from January 1, 1956 until July 31, 1956 have you determined what proportion of Nelson's pros represent interlines with Gilbertville?

Miss Kelley: That's repetitious.

The Witness: I do not know.

Mr. Keenan: I didn't understand the witness to answer with respect to that period.

By Mr. Keenan:

Q. The answer is no?

A. That's right.

Q. Aside from the question of eliminating interline billing between Gilbertville and Nelson, what was the reason why you'd be able to eliminate some of this billing work?

A. The two girls in the two separate companies are doing the same type of work.

Q. Do you mean at the present time that each one of those girls is not occupied during her complete day?

A. She's occupied, but she may be doing work that's just as easy for one, one billing rather than two separate billings.

Q. Is it the elimination of these two girls which occurs for the full \$8100?

A. Actually three girls at \$52.50 a week.

Q. Have you explained the reason why you'd be able to [fol. 352] eliminate the three girls fully? In other words, is there anything more you want to say about it?

A. No.

Mr. Keenan: I have no further questions.

The Witness: My accounting fee, that would be saved.

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[fol. 353] By Mr. Keenan:

Q. Just one further question on this matter of administrative and general, Mr. Solomon. Do Gilbertville and Nelson employ the same printer today to get up their office supplies and stationery?

A. There are numerous printers and persons they buy their office supplies from. I would say in many cases they do purchase from the same supplier.

Q. And do they have their stationery printed by the same [fol. 354] printer?

Miss Kelley: I object. What's the materiality if they go to the same printer?

Exam. Baumgartner: I can't see it either.

Mr. Keenan: I claim the question.

Exam. Baumgartner: You do what?

Mr. Keenan: I claim the question, if the Examiner please.

Exam. Baumgartner: Go ahead with it. I can't see the materiality of it.

The Witness: I do not know.

[fol. 356] By Mr. Keenan:

Q. Did somebody owe Kenneth Nelson \$20,000 on July 31, 1956?

Miss Kelley: We went all into this yesterday.

Mr. Keenan: There's N.P. in your notes.

The Witness: N.P. means Notes Payable.

By Mr. Keenan:

Q. When you stated previously, sir, that there were some records of Gilbertville Trucking Company and L. Nelson & Sons at the same address in Ellington, Connecticut, you then went on to say they were the main records, if I recall correctly. Will you tell me what you mean by main records?

A. The journals, the ledgers, it would be entirely everything except any subsidiary records that would be kept at a terminal. Eventually the terminal records would wind up in the main office.

Q. So that whatever records there are at the terminals, do I understand correctly, eventually would be reported either in copies or in summary form to the main office?

A. Correct.

Q. And in the final analysis, then, at Ellington you could get an annual record of all business transactions by both corporations, L. Nelson & Sons and Gilbertville Trucking Company, right?

[fol. 357] A. Correct.

Q. You also said the first floor was devoted to Nelson & Sons something or other, and for some reason you were interrupted and I was curious to know what that was devoted to, Nelson's business?

A. That is right.

Q. The second floor is devoted to Gilbert's business?

A. Entirely, yes.

Q. How many telephone lines run into that building at Ellington, do you know?

A. I do not know. There are several.

Q. Is it possible, is there a switchboard by which you can cross-switch from one floor to the other and from one corporate headquarters to the others in incoming telephone calls?

A. That is right.

[fol. 358] Q. Are you a CPA?

A. No; I am in the state of New York, yes.

Q. Other than the Nelson Corporation, do you do any accounting work for any interstate commerce carriers?

A. No others.

Q. And your limit of experience has been the companies that are involved in this proceeding for accounting?

A. For accounting?

Q. Yes, in that field, in the transportation field.

A. In the transportation field, yes.

Q. Now, sometime in March of 1953 you testified there was a note for \$10,000 from Kenneth Nelson and Oscar Chilberg to a Mr. Vachon, correct?

[fol. 359] A. In March of 1953?

Q. About that time.

A. Yes, sir.

Q. And that the balance of \$13,000 in cash was paid to Mr. Vachon after being held in escrow until July of 1953?

A. No, that isn't right.

Q. A note for \$10,000 was given to Mr. Vachon and there was a balance paid to Mr. Vachon of \$13,000 or an additional amount.

Miss Kelley: Mr. Examiner, possibly I could help Mr. Solomon in his recollections to save time. Mr. Solomon, do you recall in your original testimony that there was a question as to the net amount which Mr. Vachon got after the payment of the obligations? I don't recall whether it was 13 or 15.

The Witness: I mentioned that Mr. Vachon received \$22,474.04.

Exam. Baumgartner: Net?

The Witness: Net. Of course, the corporation had liabilities prior to—

Exam. Baumgartner: We are not interested in that angle now.

Mr. Barrett: Well, I use 13,000 for a round figure.

The Witness: Yes.

By Mr. Barrett:

Q. And that \$23,000, using a round figure, was made up of a \$10,000 note which we just talked about, is that correct? [fol. 360] A. See, it cost Kenneth Nelson exactly \$35,000, no more, no less.

Q. Just answer my question. We are probably a little confused on the way my question is framed, and I took it from my notes. Mr. Vachon received a net of \$13,000, correct?

A. Yes.

Miss Kelley: Speak up so the Reporter can hear.

The Witness: Yes.

By Mr. Barrett:

Q. \$23,000, round figure?

A. Yes.

Q. That \$23,000 was made up of a promissory note in the amount of \$10,000?

A. Right.

Q. And the balance was in cash and was held in escrow by an attorney or more than one attorney?

A. That is right.

Q. Now, according to your figures there should be a balance of \$12,000 that Mr. Nelson would have paid to make the \$35,000 figure, is that correct?

A. No, that's incorrect.

Q. If everything in the corporation balanced out he would have paid a net of \$35,000?

A. He did pay thirty-five.

Q. We have accounted for \$23,000 of it, correct, the note and the cash?

[fol. 361] A. Yes.

Q. Now that's what I'm getting at, the additional \$12,000.

A. Yes.

Q. To whom was that paid and how was it paid?

A. See, beginning March 3, 1953 the escrow agents had on hand \$35,000 less \$10,000 that was given to Mr. Vachon as a note payable. In other words, \$25,000 they had.

Q. In cash?

A. Correct. Between March 3, 1953 and July 24, 1953 the escrow agents then disbursed various liabilities that were incurred under the predecessor stockholder.

Q. To the tune of \$12,000?

A. Correct.

Exam. Baumgartner: These expenditures by the escrow agents were for the account of the Gilbertville Trucking Company?

The Witness: Gilbertville Trucking Company, Incorporated.

Exam. Baumgartner: To liquidate their obligations?

The Witness: Correct, sir.

By Mr. Barrett:

Q. To clear up the record at the request of your own counsel, would you explain at this point the bookkeeping entries as to that money that was used by the escrow agents to pay these expenses or liabilities of Gilbertville Trucking?

A. Yes. The corporation has on its books liabilities for \$14,000. The escrow agents pay out the \$14,000. Therefore, [fol. 362] the liabilities are cancelled on the corporation's books.

Q. Was that \$14,000 actually put through the banking account and books of Gilbertville Trucking Company?

A. I could not answer that right now.

Exam. Baumgartner: Just a moment. I'm a little confused. A little while ago the answer was given on the basis of an out payment by the escrow agents of \$12,000 to liquidate the obligations of Gilbertville Trucking Corporation.

The Witness: It was used in round figures. It's actually \$14,000.

Exam. Baumgartner: A moment ago you mentioned a figure of \$14,000.

The Witness: I believe Mr. Barrett knows.

Mr. Barrett: Mr. Examiner, we are using round figures. Actually, if it was carried out to hundredths of dollars it would actually be 14 instead of 12.

The Witness: It's \$14,992.36, and what he is inferring there is that would then be subtracted from the amount.

Miss Kelley: Mr. Examiner, at this point and for clarity on the record, I spoke to Mr. Barrett and asked if he had any objection to asking that question. Now I'm no bookkeeper, but this is the point that struck me, that it is my understanding that since the liabilities were on the books of the Gilbertville Trucking Company for this roughly \$14,000, that something had to be reflected as being paid into Gilbertville Trucking Company to satisfy that \$14,000. [fol. 363] Exam. Baumgartner: Yes.

Miss Kelley: In other words, there had to be an offset, from my general understanding of bookkeeping, and I thought that if at this point in the record we could have Mr. Solomon describe those bookkeeping entries as to whether that \$14,000 went on the books as a loan to somebody or just what it was, that it might be helpful for us all to understand this matter when we come to this part of the record.

Exam. Baumgartner: Did he explain the bookkeeping entries to your satisfaction?

Miss Kelley: Not so that I understood it.

The Witness: It's not a loan from—

Exam. Baumgartner: Please just explain the bookkeeping entries that were made.

The Witness: The sum of \$14,000, \$14,992.36 was paid out by the escrow agents.

Exam. Baumgartner: Was it paid out by them directly to the creditors, or did the money pass through the Gilbertville Trucking Company accounts?

The Witness: Frankly, I do not remember whether it was paid directly by the escrow agents or from the funds of the corporation.

Exam. Baumgartner: Well, if it was paid from the funds of the corporation, what was the source of those funds, or [fol. 364] do you know?

The Witness: The source of the funds then would be, if it was paid from the corporation, it was funds that Kenneth Nelson gave to the escrow agents.

Exam. Baumgartner: I see. It would pass from the escrow agents into the books of the corporation, is that what actually took place, do you recall?

The Witness: I'm quite positive it did.

Miss Kelley: Well, Mr. Examiner, you must know more about this than I do.

Exam. Baumgartner: I don't.

Miss Kelley: Well, for example, I was involved in another transaction that was somewhat similar where there were obligations of the company that were paid out of the escrow funds, and my understanding in that proceeding was that the funds that were used by the escrow agents to discharge the obligations of the corporation were reflected on the books of the corporation as a loan from the new stockholders.

In other words, this money was shown coming in and then as paid out to discharge the obligations even though it was handled through escrow agents, and frankly that is what I'm concerned about here and wondering just how that was handled, so that if it might have been reflected as a receivable, for example, back to Kenneth Nelson or if it was—

The Witness: I looked it up and it was handled as a note [fol. 365] payable to Kenneth Nelson and Oscar H. Chilberg.

Exam. Baumgartner: Note payable in what amount?

The Witness: The figure I have here as of July 31, 1953, \$13,247.40.

Exam. Baumgartner: That was the obligation of the Gilbertville Trucking Company?

The Witness: That's right.

Exam. Baumgartner: Obligation paid to Kenneth Nelson and Oscar.

The Witness: What was that, sir?

Exam. Baumgartner: That note was an obligation of the Gilbertville Trucking Company.

The Witness: A note of the Gilbertville Trucking Company, that's right.

Exam. Baumgartner: Payable to Kenneth Nelson and Oscar Chilberg?

The Witness: Correct.

Mr. Barrett: All set, Mary?

Miss Kelley: Thank you very much, Mr. Barrett.

By Mr. Barrett:

Q. Do you know when, if at all, that note was discharged by Gilbertville Trucking?

A. Yes. Prior to August 1st—which note are you referring to now?

Q. That one that was reflected for the payment of the liabilities. The one you were just talking about.

[fol. 366] Miss Kelley: For clarity, the \$13,247.40.

The Witness: That note has not been paid.

By Mr. Barrett:

Q. Looking at Exhibit B-4 of the application, notes payable to officers of fourteen thousand odd dollars.

A. Notes, payable, yes, sir.

Miss Kelley: Mr. Keenan, could I ask if you would give Mr. Barrett a copy of the application which I loaned you? It may help him and it would relieve the record for the Examiner so that he might know what's going on.

Exam. Baumgartner: If there's a shortage out there, I don't mind sharing it with the witness.

Mr. Keenan: No shortage, sir, it's okay.

Miss Kelley: I loaned one to Mr. Keenan which he put in his bag or something.

By Mr. Barrett:

Q. Did you answer the question, Mr. Solomon?

A. Would you mind restating it please?

Exam. Baumgartner: Would you read the question, Miss Reporter?

Mr. Barrett: I can restate it.

By Mr. Barrett:

Q. On Exhibit B-4 attached to the application, the balance sheet of May 31, 1955, there's a note payable to officers in the amount of fourteen thousand odd dollars. Is that the same note?

A. No. It would be part of the same note. Some monies go in and then Kenneth Nelson may have salaries credited [fol. 367] to him on the books and he hasn't withdrawn the full salary.

Q. You just stated that note of fourteen thousand odd dollars that was given to Mr. Nelson and Mr. Chilberg to discharge the liabilities has not been paid as yet. Has any part of it been paid?

A. Of the particular note?

Q. That's right.

A. It must have been, part of it may have been, a thousand or so paid at one time or another.

Q. Well, you say must have been. Is the answer you don't know, or do you know?

A. I do know that part of it was paid. Exactly what part of the original note, I couldn't tell you. He is given credit for all his notes.

Q. Did you prepare this Exhibit B-4 of the application?

A. I did.

Q. As of May 31, 1955 your records reflect just what notes and what amounts Gilbertville owes officers?

A. Notes payable of May 31, 1955, \$14,037.75.

Q. I know. I have that in front of me. The breakdown of individual notes to make up that total amount.

A. All to Kenneth Nelson.

Q. And how many individual notes or loans are reflected in this \$14,000 figure?

A. I could not say how many.

Q. Do you have any records with you?

[fol. 368] A. No, sir.

Q. Is all that money in that notes payable account reflected by executed notes, or is some of it just loaned?

A. That's right, some of it is without a note to him.

Exam. Baumgartner: Loans without notes?

The Witness: That is correct.

Mr. Keenan: Running accounts?

The Witness: Running accounts they would be. They vary each month.

By Mr. Barrett:

Q. Now as I understand it, Mr. Solomon, when Kenneth Nelson took over control of the Gilbertville stock all the current assets of Gilbertville were washed out, and in other words the cash and the accounts receivable were taken over by Mr. Vachon.

A. No.

Q. I misunderstood your testimony then.

A. The agreement is \$35,000 coming from Kenneth Nelson plus whatever cash there was in the corporation, plus good accounts receivable, plus prepaid items.

Q. I don't mean to interrupt you. All right, then, the cash that was in there and the good accounts receivable, if any, were used as a credit against the current liabilities, is that correct?

A. That would be it.

Q. In addition to that, this additional \$14,000 was necessary to discharge liabilities also, is that correct?

A. Excuse me, I'll look that up. In addition, the liabilities themselves, \$14,992.36.

Q. Now, that being so, wasn't the intent of Mr. Nelson to take over the corporation free of all current liabilities?

A. Free of all liabilities that were incurred prior to his taking over the capital stock.

Q. Now, he acquired some equipment in that deal, is that correct?

A. Correct.

Q. Was there any obligations outstanding on the equipment at that time?

A. I'll give you that in a moment. There were no obligations on any equipment when Kenneth Nelson took over as of March 1, 1953.

Q. So, then, in effect Mr. Nelson, Kenneth Nelson, took over free of any liabilities the Gilbertville Corporation, forgetting the capital stock items, is that correct?

A. That is correct.

Q. And on the assets side of the picture, when Mr. Kenneth Nelson took over there was the equipment, the rolling stock, office equipment, if any, and the organization expense and the franchise expense was carried on the books, is that correct?

A. That's substantially correct.

Exam. Baumgartner: Materials and supplies too?

[fol. 370] The Witness: Excuse me, I'll look at the balance sheet here. There were prepaid insurance, and the original organization legal fees, that would naturally still remain on the books as an asset, the ICC rights as an asset, and the revenue equipment.

By Mr. Barrett:

Q. And the office furniture, correct?

A. Right, sir.

Q. At that time what was the ICC franchise of Gilbertville carried on the books, at what amount?

A. \$1,250.

Q. Now, as of the date that Mr. Nelson took over there was no working capital in the Gilbertville corporation, is that correct?

A. That's correct.

Q. Was any money advanced to Gilbertville for working capital?

A. He advanced \$5,000 for working capital.

Q. And how was that advanced in cash or how?

A. By cash I assume you mean check?

Q. Yes.

A. Yes, by check.

Q. And was that in addition to the \$35,000?

A. Correct.

Q. And to your knowledge—

Exam. Baumgartner: When you say "in addition to \$35,000," that \$35,000 was to go to Vachon and not to the corporation.

[fol. 371] Mr. Barrett: That's right.

Exam. Baumgartner: Now Mr. Nelson puts \$5,000 into Gilbertville as working capital?

Mr. Barrett: That's correct.

Exam. Baumgartner: That wouldn't be in addition to the \$35,000.

Mr. Barrett: I was referring to a payment from Mr. Nelson to get into this business.

By Mr. Barrett:

Q. Now do you know what the source of that \$5,000 that Mr. Nelson put into Gilbertville Trucking was? Was it a loan?

A. Yes.

Q. And from whom was it borrowed?

A. It's part of this loan that was read earlier from the First National Bank of Manchester. May I explain it clearer and you'll probably follow it. He borrows from the First National Bank of Manchester \$30,000; he gives Mr. Vachon a loan of \$10,000; that's forty in all. All he had to pay for the stock was thirty-five and that's how we get that \$5,000 that went in as working capital.

Q. Now, while we are on that subject, if I recall correctly in reading that letter from the bank, within a few weeks after that loan was made \$15,000 was repaid.

A. Correct.

Q. Will you explain that?

[fol. 372] A. Yes. I believe that's in the agreement that was shown here this morning. Only \$10,000 was required. I guess you'd call it a binder; originally. The other sum went into the escrow agents. Now on March 2, 1953 when Kenneth Nelson borrowed and Oscar Chilberg borrowed \$30,000 from the bank, on the third of March he had to pay \$10,000 as I believe it states in the agreement. However, he had \$30,000 on hand. He placed \$5,000 as working capital and the other \$15,000 he repaid the loan, just temporarily. And it states further in that letter that on a date in April he then reborrowed—on April 30 he went again to the bank and secured the additional \$15,000 that he had repaid to the bank on March 5. It's still \$30,000. He needed that for the escrow agents.

Q. And that original loan from that bank is still outstanding in some amount as of the present time?

A. Correct.

Q. And there was no monies other than that which you have just told us about that were used by Kenneth Nelson or Oscar Chilberg to finance the purchase of the Gilbertville stock?

A. No other money, that's correct.

Q. Now, that was in March and April of 1953, right?

A. Right.

Q. Was Oscar Chilberg during that period still owner of that garage in Philadelphia?

A. Yes, he was.

[fol. 373] Q. And during that time did that garage do work for the L. Nelson & Sons Corporation?

A. Yes, that's correct.

Q. You stated that early in 1954 you advised Kenneth Nelson to seek a merger with L. Nelson & Sons, do you recall that?

A. That's correct.

Q. Will you tell us just what your advice to Mr. Kenneth Nelson was?

A. Yes, to try to establish some credit, not pay high finance rates on each time he'd buy equipment on chattel mortgage and, therefore, reduce his interest charges, and he continuously was financing himself backward in payments of obligations to creditors. He also desired to expand further.

Q. Now you stated what his conditions were. Now, will you tell us what advice you gave him?

A. I spoke to him and told him first to see Miss Kelley to find out if a merger were possible as far as legal and as far as ICC regulations go.

Q. And did you tell him when he talked to Miss Kelley regarding this merger to refer to any other transportation company with which he should consider merging?

A. I did, yes.

Q. What was the name of that company?

A. Nelson's.

Q. Did you suggest that he merge with any other carrier [fol. 374] other than Nelson?

A. No, I did not.

Q. At the time you gave him this advice, did you know whether from your accounting relationship with L. Nelson,

did you know whether the Nelson Company was susceptible to a merger deal?

A. I do know.

Q. Did you know at that time?

A. I did know, yes.

Q. What did you know as far as that is concerned?

A. Yes, that it was very apparent the Nelsons, Charles Chilberg and Clifford Nelson were more interested in a southerly route to expand down south at that time.

Miss Kelley: I'm sorry; I don't understand the answer.

Exam. Baumgartner: Miss Reporter, will you please read the question.

(Question and answer read.)

Miss Kelley: I think we need the question and answer before that.

Exam. Baumgartner: I think we'll have to go back a little bit further.

(Record read.)

Exam. Baumgartner: I think that clears it up.

By Mr. Barrett:

Q. Does that complete your answer, Mr. Solomon?

A. That completed my answer, yes, sir.

[foi. 375] Q. Now, specifically I'm asking you, did you know whether or not when you sent Mr. Kenneth Nelson to see Miss Kelley, whether or not the L. Nelson & Company was susceptible to a merger deal as far as Gilbertville Trucking?

A. I did not know.

Q. And I take it that probably Kenneth Nelson came back and said that the deal could be worked out, is that correct?

A. That's substantially correct.

Q. And then in April of 1954 you stated you went to Mr. Charles Chilberg?

A. Correct.

Q. And up until this time Mr. Charles Chilberg did not know the proposition you advanced to Kenneth Nelson?

A. As far as I'm concerned, I'd definitely tell you he didn't know. As far as I'm concerned that is. He may have

spoken to his brother in the meantime. I wouldn't know about that, sir.

Q. Did anything come to your attention which indicated that Charles Chilberg did know about this proposition?

A. No, nothing did.

Q. Did you ever see Mr. Chilberg in the interim?

A. I certainly did.

Q. Now, in April of 1954 then you did talk to Mr. Charles Chilberg?

A. Correct.

Q. And did you give him some advice?

[fol. 376] A. I did.

Q. And did he seek some advice from you in relation to a merger with Gilbertville?

A. Right.

Q. Will you tell us what advice he sought from you and what advice you gave him?

A. Yes. I mentioned to him that the duplication, all the duplication that's occurring there could be avoided by a merger, and I myself spoke of some of the economies that could be accomplished if there were a merger.

Q. And that's the advice you gave him?

A. Yes, sir.

Q. And what did he say to you or reply to you?

A. He said to me that he was going to look into it.

Q. And—

A. And he too then asked Miss Kelley's advice about it.

Q. And do you know when it was in relation to April of 1954 that it was decided that Mr. Charles Chilberg on behalf of Nelson would go into this merger deal with Gilbertville?

A. The question is when?

Q. Yes, after this conference in April of 1954.

A. I know there was a time elapse there and it was not until January of 1955 to my knowledge that there was a conference between Charles Chilberg, Clifford Nelson, Miss Kelley, and myself took place.

[fol. 377] Q. That is as far as you know?

A. That is correct.

Q. But you don't know whether or not, in the interim

Mr. Chilberg and Kenneth Nelson, who are related, said, "All right, we'll go ahead with this"?

A. No, I do not.

Q. Now subsequent to that time in April of 1954, did not the financial structure of Gilbertville greatly increase or better itself? You can refer to the income statements in the application and Exhibit 7.

A. Yes, sir. The application Exhibit 7?

Q. And Exhibit 7. It's Exhibits B-6 particularly and 7. Well, specifically referring to the application, Exhibit B-6 (2)—

Exam. Baumgartner: B-6(1)?

Mr. Barrett: B-6(2).

By Mr. Barrett:

Q. The operating statement of Gilbertville for the year ending 1954.

A. Yes.

Q. The operating revenue was One hundred seventeen odd thousand dollars?

A. Correct.

Q. For the first five months of 1955 as reflected by Exhibit B-6(1) it had greatly exceeded that one hundred fifty-one odd thousand dollars, correct?

A. Correct.

[fol. 378] Q. And as 1955 progressed, correspondingly the revenue was that much greater?

A. If you recall, during 1955 there was a prolonged strike of approximately six weeks in the trucking industry in that area.

Q. That was in the summer of 1955?

A. Correct, sir.

Q. But as of January and the first part of 1955 Gilbertville was bettering itself, correct?

A. It was bettering itself. However, I notice that in speaking of Exhibit B-6(2) you did not mention that the corporation incurred a \$2499 loss. You're speaking about revenue only, but you didn't say that the net result was a loss.

Q. Well, all right. The exhibit is in the application. It's in the proceeding. I'm just referring to the one figure for the purpose of my question.

A. Yes, sir.

Q. And correspondingly as of May 31, 1955, the balance sheet of Gilbertville had greatly improved, is that correct? Just as an over-all picture.

A. It is, but the current assets, you see, do not increase very much, if any. In fact, the current assets on May 31 is \$72,660. The current liabilities excluding any of the notes payable, and if we took into account the sums due on the equipment within one year, he has a deficit in working capital.

[fol. 379] Q. All right. For the moment forgetting all the notes payment, and the equipment was secured by a chattel mortgage I presume?

A. That's correct.

Q. So, excluding the equipment as far as the current assets and current liabilities are concerned, there was roughly a ratio of one to one, is that correct?

A. No.

Q. Forgetting the equipment.

A. Forgetting the equipment, there is a ratio of one to one, right, sir.

Exam. Baumgartner: Mr. Barrett, may I inquire about how much longer you'll be? I'm asking that with reference to adjournment for lunch.

Mr. Barrett: Well, I think that I'll probably be three-quarters of an hour.

Exam. Baumgartner: Well, I think, then, we'd better adjourn for lunch until 1:30. Is it convenient for you?

Mr. Barrett: It doesn't inconvenience me at all.

Exam. Baumgartner: All right, then, we'll—

Mr. Barrett. Perhaps if we could finish this one subject.

Exam. Baumgartner: All right. Strike my remark about adjournment.

By Mr. Barrett:

Q. Are we agreed on that, other than the equipment obligation?

[fol. 380] A. One to one.

Q. And from your experience as an accountant in an ordinary corporation, what is a healthy ratio of the current assets against the current liabilities?

A. It varies by industry.

Q. Take a manufacturing industry.

A. A manufacturing industry, 3 and 4 to 1 at least.

Q. And trucking industry? Do you have any experience as to what a normal ratio is?

A. No, I do not, but it's not a healthy condition, it certainly isn't.

* * * * *

[fol. 382] By Mr. Barrett:

Q. Now before that particular question I think we came to a point where, if I'm wrong correct me, that as of the end of 1955 referring to Exhibits 7 and 5, that the financial structure of Gilbertville had improved since 1953 and 1954 generally.

[fol. 383] A. I don't see—you're saying Exhibit 5 which is a balance sheet as of the end of December 31, 1955 and Exhibit 7 I have here is an operating statement from January 1, 1955 to December 31, 1955.

Q. That's right.

A. Is that what you're referring to?

Q. That's right.

A. An operating statement and a balance sheet?

Q. Yes. In other words, the revenue as compared to, we'll say, 1954 was almost four times as much, correct? Or between three or four times as much. To that extent there was an improvement.

A. That is correct.

Q. And generally taking one item from the balance sheet, Exhibit 5, the deficit that existed in Gilbertville in prior years was reduced by another couple of thousand dollars?

A. That is correct.

Q. Generally there was improvement in both income and reduction of the deficit?

A. Just in those two items, but you're not reflecting, for instance, the current position, the working capital position which is short.

Q. All right. As of May 31, 1955, that's Exhibit B-4 in the application, the cash on hand and in banks improved as of the end of 1955, correct?

[fol. 384] A. Correct.

Q. Now, while generally the total current assets decreased because of the decrease in accounts receivable, correspondingly the current liabilities decreased somewhat, isn't that correct?

A. Correct.

Q. The notes payable to officers increased at the end of 1955, correct?

A. Correct.

Q. Now the biggest item we can argue over in the comparison of these two balance sheets is the change in the revenue equipment of Gilbertville between those two periods, isn't that correct?

A. No.

Q. Isn't that one of the biggest items?

A. No, it is not.

Q. What's the biggest?

A. On May 31, 1955 excluding any installment payments due within one year Gilbertville Trucking Company had a working capital of \$2,005.83.

Q. As of what date?

A. May 31, 1955, working capital of \$2,005.83. As of December 31, 1955, and again excluding working capital or the taxes that it owed, it had a deficit in working capital of \$5,342.

Q. Where does that deficit come from?

[fol. 385] A. What's that?

Q. What makes up the principal amount of that deficit?

A. Your cash and receivables as of the end of December is less than what they owed to creditors.

Q. Well, Mr. Solomon, we are not going to pursue this much further because actually there's only two balance sheets we are referring to which are within the same year, the two we are referring to.

A. Yes.

Q. So comparison isn't very well taken, isn't that correct? I mean you can make comparisons but it would be better for two different periods rather than one year.

A. Suit yourself. I have nothing to say about that.

Q. Did you ever change your advice to Gilbertville about this merger subsequent to the first time you gave it?

A. I don't recall ever changing my advice, no.

Q. And do I understand from your testimony that you consider yourself the motivating factor in suggesting this merger of Nelson and Gilbertville?

A. Well, I initiated it.

Q. Now, I don't know but I might have asked this, I'm not positive. Did you ever advise Kenneth Nelson to look for merger with any other carriers other than Nelson?

Miss Kelley: You did ask that before.

The witness: You did ask that.

{fol. 386}

By Mr. Barrett:

Q. You stated that as far as you know there was a meeting between members of the Nelson family, yourself, and Miss Kelley in January of 1955 relative to this proposed transaction, is that correct?

A. That's right.

Q. Do you have any knowledge when the application that's been filed with this Commission was signed? If I refresh your recollection, it's sometime in August of 1955?

A. That is correct. I was present at that time.

Q. And it was not filed until sometime in October of 1955?

A. I do not know what date it was filed.

Q. If the docket here reflects October of 1955, will you accept that?

A. Yes, sir.

Q. Now, as far as your own knowledge is concerned, do you know what, if any, reason there was for delay in filing the application from the 1st of 1955 to October, from your own knowledge?

A. I do not know why.

Miss Kelley: If it's of any importance, Mr. Examiner, I can explain it.

Mr. Barrett: I'm asking the witness of his own knowledge.

The Witness: I don't know.

By Mr. Barrett:

Q. Now, during this period in April of 1954 and shortly thereafter, do you know whether or not Clifford Nelson and [fol. 387] Charles Chilberg were anticipating and negotiating for the acquisition of another carrier?

A. In April, starting with April of 1954?

Q. Yes.

A. It was either April or May of 1954, I did know, yes.

Q. And they were negotiating for the acquisition of another carrier?

A. Correct.

Q. And is that R. A. Byrnes, Incorporated?

A. Correct.

Q. And that proceeding was before the Commission?

A. That's correct.

Q. And you testified in it?

A. That's correct.

Q. I might point out that was MCF 5749. And did you give advice to Charles Chilberg and Clifford Nelson relative to that acquisition?

A. I did.

Q. For the purpose of pinpointing that particular transaction, if I told you that the contract was dated June 4, 1954 and the application was filed with the Commission on July 14, 1954, will you accept that as being the approximate dates?

A. Yes.

Q. And prior to signing that contract you stated there were negotiations going on between Mr. Chilberg and Mr. [fol. 388] Clifford Nelson who acquired that Byrnes operation sometime in April or May of 1954?

A. Excuse me, would you restate that, please.

Q. I think you have just stated that negotiations were going on between Mr. Chilberg and Mr. Clifford Nelson who acquired that Byrnes operation sometime in April or May of 1954?

A. Correct.

Q. Now, did you have anything to do in your capacity with the acquisition by Gilbertville of the Louis Marmer certificate, that is, Wolff's Express?

A. No, I did not.

Q. And did you prepare any of the financial data that was submitted by them?

A. Any that was prepared must have come from me.

Q. Did you give any advice to Gilbertville relative to that transaction?

A. I did not.

Q. Did you know about it? Did you know that they were acquiring it?

A. I was told, yes.

Q. And for the purposes of fixing the date on that, if I told you that the applications were signed as of the date of April 28, 1954 and was mailed to the Commission on May 14, 1954 would you accept that as the approximate time?

A. Yes.

[fol. 394] By Mr. Barrett:

Q. Now you heard counsel state that the Byrnes acquisition had been consummated as of August?

A. August 21, 1956 is the correct date. I think you have it [fol. 395] down as the 22nd of August.

[fol. 397] Exam. Baumgartner: Well, it's simple enough to say, did L. Nelson & Sons Company advance any funds for the acquisition of the R. A. Byrnes rights or business.

By Mr. Barrett:

Q. Can you answer that question, Mr. Solomon?

A. The L. Nelson & Sons did not take any loans from a bank in order to finance the purchase.

Exam. Baumgartner: That isn't the question I asked. The question I asked was did L. Nelson & Sons advance any funds to anybody for the acquisition of the R. A. Byrnes Corporation?

The Witness: No, they did not advance any funds.

By Mr. Barrett:

Q. Did any member of the Nelson Family?

Miss Kelley: Well, Mr. Examiner, the two members of the Nelson Family—

By Mr. Barrett:

Q. Other than Charles Chilberg and Nelson.

A. Any member of the family?

Q. Yes.

A. No member of the family.

Q. Did the Bergson Corporation?

A. No, sir.

Q. Now, in connection with any loans that were taken to [fol. 398] finance the Byrnes transaction, did any person in the Nelson family other than Charles Chilberg and Clifford Nelson, or did the Bergson Corporation or L. Nelson & Sons endorse or guarantee any notes to your knowledge?

A. To my knowledge they didn't endorse any notes.

Q. You do the accounting work for Byrnes?

A. I do, and I made a mistake this morning when I said it's two carriers. I now say it's three carriers I have experience with, those three being Gilbertville, Nelson, and Byrnes. This morning I testified there were two.

Q. Well, when I asked you that question I was assuming that one also.

A. Yes, sir.

Q. Where is the Byrnes headquarters just for the record at the present time?

A. 25 West Road, Ellington, Connecticut.

Q. That's where Nelson and Gilbertville terminal is, in that city?

A. That's right, sir.

Exam. Baumgartner: But not in the same building?

The Witness: The office is in the same building, yes, sir.

Exam. Baumgartner: With L. Nelson?

The Witness: With L. Nelson on the first floor, yes, sir.

By Mr. Barrett:

Q. And to shorten this up, does Byrnes occupy the same terminal facility in New York City that Gilbertville and [fol. 399] Nelson do?

A. That is correct, sir.

Q. And whatever other terminals Byrnes might have, is the only common one between them and Gilbertville in New York City to your knowledge?

A. No, I believe there are other terminals that are common for three carriers.

Exam. Baumgartner: Common to what?

Miss Kelley: Mr. Examiner, may I first inquire, will you permit me to inquire of Mr. Solomon, I doubt that he understands the operating authorities of these companies.

Exam. Baumgartner: What?

Miss Kelley: I doubt if he understands the limits of these companies.

Mr. Barrett: I didn't ask him the operating authorities. I just asked him is that the only point where Gilbertville and Byrnes share a common terminal.

Exam. Baumgartner: Gilbertville and Byrnes?

Mr. Barrett: That's right.

The Witness: I do not know.

Exam. Baumgartner: You want to change your answer then? You said a moment ago there were some other places where they had common terminals.

The Witness: That's right.

Exam. Baumgartner: You want to change it now and say [fol. 400] you don't know?

The Witness: I do not know.

By Mr. Barrett:

Q. Now, do you know anything specifically about the different operations of the three carriers, Byrnes, Nelson and Gilbertville as far as relate to how they use the common facilities that they share like terminals?

A. I do not know.

[fol. 402] By Mr. Barrett:

Q. To clear this up, you testified as far as this subject matter is concerned, as far as you know, Byrnes shares common facilities with Gilbertville and Nelson in a terminal in New York City?

A. That's right.

Q. And in Ellington, Connecticut, Byrnes offices are in Nelson's headquarters?

A. That is correct.

Mr. Barrett: Does that clarify it?

Miss Kelley: That clarifies it.

Exam. Baumgartner: What do you mean by Nelson's headquarters? You mean same building or physically in the same office space?

The Witness: In the same building. It's separate space for Byrnes employees.

Exam. Baumgartner: All right.

Mr. Keenan: Mr. Examiner, out of order could I inquire whether that space is on Gilbertville's floor or Nelson's floor.

The Witness: The first floor, I said, Nelson's floor.

[fol. 408] The Witness: As of July 31, 1956 equipment operated, owned and operated by Gilbertville, 35 units.

Exam. Baumgartner: Did you say owned and operated?

The Witness: Owned and operated.

By Mr. Barrett:

Q. Wait a minute, now, Mr. Solomon. You say owned and operated. I'm asking you specifically as to owned at the moment.

A. Owned?

Q. Yes.

A. 35 units.

[fol. 409] Q. Do you note the two items transportation and terminal?

A. Yes, sir.

Q. Could you give us any explanation as to why the [fol. 410] terminal expense exceeds the transportation expense?

Exam. Baumgartner: What was that, Mr. Barrett?

Mr. Barrett: Pardon me. I asked him if he could give us any explanation as to why the terminal expense exceeded the transportation expense.

Exam. Baumgartner: Thank you.

The Witness: Looking at it here, I would say it appears to me that the bookkeeper may have been charging terminal wages that are actually drivers wages. Drivers wages are under transportation, whereas terminal wages belong under terminals.

Exam. Baumgartner: Would that be true of pick-up and delivery drivers if there are any?

The Witness: Pick-up and delivery drivers should be under terminal wages, but the amount here, for instance, New York terminal wages is one hundred, close to \$117,000 and it must be, I know there are drivers that go from New York.

Exam. Baumgartner: Over-the-road drivers?

The Witness: That's right, sir.

By Mr. Barrett:

Q. Will you refer to Exhibit No. 4 for a moment?

A. Yes, sir.

Q. Referring to the same two items in L. Nelson operating statement, the terminal expense is a small part as against the transportation expense, \$25,000 as against \$276,000.

A. That's correct.

[fol. 411] Q. And normally, doesn't the transportation expense exceed the terminal expense in a line-haul carrier?

A. It does exceed it, yes.

Exam. Baumgartner: He said normally.

The Witness: Normally, yes.

By Mr. Barrett:

Q. With that in mind, can you tell us how much of an error is contained in the two items in the Exhibit No. 8 in the transportation and terminal items?

A. No, I could not.

Q. However, you used those two items as they stand on Exhibit 8 to make your computation as far as Exhibit No. 11 is concerned?

A. Correct.

Q. Referring to Exhibit 8 again, you have operating taxes and licenses in an amount of twenty-seven odd thousand dollars, correct?

A. On Exhibit No. 8?

Q. Yes, the item operating taxes and licenses.

A. Exhibit No. 8, operating taxes and licenses, yes, sir.

Q. And on Exhibit 4, the same item for Nelson is \$49,000 correct, in round figures?

A. Yes, sir.

Q. Could you tell us why, if there is any explanation within your knowledge, why proportionately for the number of which you state was 35, that figure is comparatively high [fol. 412] when you consider Nelson operates well in excess of twice as many vehicles?

A. I could not answer that.

Q. And as far as your general knowledge is concerned, Nelson operates in several more states than does Gilbertville, isn't that correct? It's authority is broader territorially than Gilbertville's?

A. Nelson's is broader, yes.

Exam. Baumgartner: Authority is broader?

The Witness: I don't know anything about authority; I'm merely stating the territory probably covered.

Exam. Baumgartner: And what's actually operated?

The Witness: That's right, sir.

By Mr. Barrett:

Q. Now, referring back to Exhibit No. 8 again, of the transportation expenses shown there of \$115,000 how much of that is purchased transportation?

A. Of Gilbertville?

Q. Yes.

A. I stated that yesterday, that it was—

Miss Kelley: I believe that figure is clearly in the record.

The Witness: It was given yesterday exactly. It is approximately \$7,000.

By Mr. Barrett:

Q. And how much of that \$7,000 was or is purchased from Nelson, if you know?

A. Most of it would be from Nelson.

[fol. 413] Q. And just for the record what do you mean by the term, "most of it," over 75 per cent of it?

A. In excess of 75 per cent, yes. I could give you that answer now, \$7,065.03.

Q. And in Exhibit No. 6 in your Accounts Receivable on Gilbertville for July 31, 1956, do you know how much, if any, of that is due from the Nelson Corporation?

A. At the end of July, 1956, none of that would be from Gilbertville.

Miss Kelley: Did you refer to Exhibit 6?

Exam. Baumgartner: You mean none of it from Nelson?

The Witness: Thank you. We are looking now on the Gilbertville balance sheet, Accounts Receivable, customers, none of the \$56,657 would be due from Nelson.

Q. Referring to the Exhibit No. 2, the balance sheet of Nelson for the same period, on Accounts Receivable customers of \$72,000 in round figures, how much of that, if any, is due from Gilbertville?

A. Yes, sir. The sum due from Gilbertville to Nelson that's included in Nelson's accounts receivable as of July 31, 1956 is \$9,621.89.

Q. Where there's a vehicle leased, for example, from Nelson by Gilbertville, do you know whose driver is on the vehicle or who pays the driver from your records?

A. Yes, I do.

[fol. 414] Q. Will you tell us?

A. Yes. The vehicles are leased by Nelson to Gilbertville without any drivers.

Q. Do you know from your records approximately how many vehicles per week or per day Gilbertville does lease from Nelson?

A. No, I do not.

[fol. 415] Exam. Baumgartner: The question is do they use the same telephone at the Boston terminal.

By Mr. Barrett:

Q. If you know.

A. I do not know.

Q. If they did, do you know who is paying for it?

Miss Kelley: Well, now, I object.

Exam. Baumgartner: I think that's rather speculative.

By Mr. Barrett:

Q. Do your records reflect any telephone expenses of Gilbertville?

A. Sure.

Q. And do they reflect telephone expenses of Nelson?

A. Yes.

[fol. 416] Q. And was telephone expenses one of the items carried into Exhibit No. 11 for proposed savings?

A. No, it is not.

Q. As far as dispatchers are concerned in the common terminals of Nelson and Gilbertville, if you know, do you know whether common dispatchers are used?

A. I don't know that.

Q. And is that one of the items that was taken into Exhibit 11 to effect savings?

A. No dispatchers are taken into consideration on savings.

Q. I think you told us who Gilbertville bought its equipment from. Do you know whether or not the equipment is bought from the same manufacturer, specifically International, by both companies?

A. If you're referring to my testimony of yesterday, in looking it up last night, I found I did make a—I made a statement—

Miss Kelley: Mr. Solomon, I don't think you're answering his question.

The Witness: If the purchase from the manufacturer, did you say—

By Mr. Barrett:

Q. From the same manufacturer. In other words, does Nelson purchase International equipment?

A. Yes.

Q: Did you testify yesterday that's where Gilbertville [fol. 417] purchased also?

A. From International also, yes.

Q. Now, when Kenneth Nelson disposed of his stock in L. Nelson & Sons, I think you said September of '51, could you tell us what equity or interest he had in L. Nelson dollar-wise?

Miss Kelley: I don't quite follow on that.

Exam. Baumgartner: As of what time, Mr. Barrett?

Mr. Barrett: As of the time he disposed of his L. Nelson stock.

Exam. Baumgartner: Do you understand the question? [fol. 418] The Witness: I believe that was given yesterday in detail. This is a long question now, Mr. Barrett. He sold 50 shares. All together in the Nelson Corporation there was 500 shares. 300 was held as of September of 1951 by the—

Exam. Baumgartner: I think, Mr. Solomon, you could make this answer comparatively short if you will direct your answer squarely to the question that was asked. What financial—

Mr. Barrett:—interest or equity—

Exam. Baumgartner:—was—when we use the term "equity," that excludes loaned money, what equity did Kenneth Nelson have in L. Nelson & Sons just prior to his disposition?

The Witness: He had a 10 per cent interest.

Exam. Baumgartner: About 10 per cent?

The Witness: Exactly 10 per cent.

By Mr. Barrett:

Q. Now 10 per cent on approximately how ~~many~~ dollars in round figures? 10 per cent of what?

A. As of September 31, September of 1951?

Q. Yes.

A. I'll give you that answer.

* Exam. Baumgartner: That would depend on the market value of the shares, wouldn't it?

Mr. Barrett: I don't know what Mr. Solomon is going to give me.

The Witness: The figures that I will be basing it on will be the book value.

[fol. 419] Exam. Baumgartner: Book value?

The Witness: Yes, sir. As of September 30, 1951, book value of \$82,000. Nelson had a book value of \$82,684.

By Mr. Barrett:

Q. Or transcribed, 10 per cent of that Kenneth Nelson would be \$8,268 in round figures?

A. That's correct.

Q. And if that transaction would have been consummated as of July 31, 1956, referring to Exhibit No. 9, is it true that his interest in Nelson, if I read the exhibit correctly, will be \$24,500 odd dollars?

A. That is correct.

Q. Do you know when Kenneth Nelson first began to negotiate or bargain for this Gilbertville stock?

A. When—as I understand the last question—

Q. Was that last answer all right?

A. Yes. Did you state when did Kenneth Nelson begin to negotiate for Gilbertville stock?

Q. Yes, do you know?

A. Yes.

Q. Approximately what time.

A. Yes, in January or February of 1953. The exact date would be, as far as I know and I have testified before, January 19, 1953.

Q. As far as your relationship with the two corporations and the principals involved in them, did you ever have any

[fol. 420] discussions about L. Nelson & Sons directly taking over Gilbertville? That is, at the time that Kenneth Nelson was negotiating for the stock.

A. Oh, no, no.

Q. Now, do any of the Nelson Family receive income from the Bergson Corporation; specifically the Chilbergs and Clifford and Kenneth Nelson, so forth.

A. They did receive income from Bergson, yes, sir.

Q. Did they in the year 1953?

Miss Kelley: I object, Mr. Examiner. What's the materiality of that?

The Witness: No, not in 1953.

Exam. Baumgartner: What was your objection?

Miss Kelley: As to the Bergson Company. I mean I can't see the materiality of whether or not they received any income from it.

Exam. Baumgartner: I take it the conversation you testified as having received was in the form of dividends?

The Witness: No, I never testified, Mr. Examiner, as to any income of Bergson Company. This is the real estate holding corporation. It took place because of the estate.

Exam. Baumgartner: I thought you said they received some stock, didn't you? You mentioned several parties there as having received income from Bergson, didn't you, in your question?

[fol. 421] Mr. Barrett: That's right.

Exam. Baumgartner: And you answered they did, from Bergson.

The Witness: From Bergson.

Miss Kelley: May we have the question and answer read?

Mr. Barrett: I'll ask the question again, Mr. Examiner.

Exam. Baumgartner: Yes.

By Mr. Barrett:

Q. Mr. Solomon, have any of the members of the Nelson Family, and I understand seven of them own shares in the Bergson Corporation, do any of those seven persons receive any income from the Bergson Company?

A. Some of them do.

Q. And which ones do?

A. Prior to the year 1955 Ruth Nyberg, Greta Carlson, and Howard Chilberg.

Q. And for how many years prior to 1955 did that arrangement exist?

A. Since the date the corporation began as of—first became active in January of 1953.

Q. And subsequent to 1953 who received any compensation from Bergson, if anybody?

A. Subsequent to?

Exam. Baumgartner: Who of the seven, you mean?

Mr. Barrett: That's right.

The Witness: Subsequent to?

[fol. 422] By Mr. Barrett:

Q. January 1, 1955.

A. All seven children.

Exam. Baumgartner: That was in the form of dividend payments?

The Witness: Directors' salary.

Exam. Baumgartner: None in the form of dividends?

The Witness: None in dividends, no.

By Mr. Barrett:

Q. And all seven subsequent to January 1 of 1955 received directors' salaries from Bergson?

A. That's right, sir.

Q. And is it all in equal amounts to the seven of them?

A. It is in equal shares, yes, equal payments.

Q. Did you sometime during the course of your testimony give the officers and directors of the Bergson Company, do you recall?

A. I did. I can give it to you very easily right now.

Exam. Baumgartner: Well, unless it's important, let's not go into it now.

Miss Kelley: It's in the record.

Mr. Barrett: If it's in, all right; I just forgot.

By Mr. Barrett:

Q. Now in 1952, you testified that Kenneth Nelson received some fifteen odd thousand dollars from L. Nelson, as you put it, as a free lance tariff consultant?

A. That's correct.

Q. During that year in the same capacity do you know [fol. 423] how much Kenneth Nelson received from others outside of Nelson?

A. Let's see. I gave the figure of \$15,650 Kenneth Nelson received in 1952 as a free lance tariff consultant.

Q. All right.

A. It's the sum total, I think you're getting at.

Q. Of that amount, how much was received from L. Nelson & Sons?

A. From the information I have with me, I could not say just how much of it is.

Exam. Baumgartner: Was any of it?

The Witness: Oh, yes.

Exam. Baumgartner: Received from others?

The Witness: From others.

Exam. Baumgartner: From others than L. Nelson Company?

The Witness: From my records I would not know.

Exam. Baumgartner: I was asking do you know if some was received from carriers other than L. Nelson?

The Witness: I do not know.

By Mr. Barrett:

Q. In that fifteen odd thousand dollars just given us, did that include any income from the Bergson Corporation?

A. No.

Q. From your personal recollections, do you know whether or not a little or a half or a majority of that fifteen odd thousand dollars came from L. Nelson & Sons?

A. Majority.

[fol. 424] Q. Majority?

A. Majority comes from L. Nelson & Sons.

Q. And percentage-wise could you classify a majority by round figures?

Miss Kelley: If you know.

The Witness: I don't know exactly.

By Mr. Barrett:

Q. Well, you mean at least over 50 per cent?

A. Oh, yes.

Exam. Baumgartner: Well, now, wait a minute. You said a moment ago you didn't know whether Mr. Nelson had received a portion of this \$15,000 from others.

The Witness: Yes.

Exam. Baumgartner: You said you didn't know?

The Witness: That's right.

Exam. Baumgartner: Now you say he received only a portion of the \$15,000 from L. Nelson.

Miss Kelley: Well, I understood that's what he said.

Exam. Baumgartner: Isn't there an implication that he received the balance from others?

The Witness: I'm sorry.

Exam. Baumgartner: Maybe I'm confused. I want to be straightened out.

Mr. Mueller: Mr. Examiner, I think my notes clearly show in answer to a question yesterday the witness stated that this \$15,000 came from L. Nelson & Sons Transportation Company.

[fol. 425] Mr. Barrett: That's what I have.

Exam. Baumgartner: That's my recollection, L. Nelson.

Miss Kelley: I'll agree with you people that he said that, but I also recollect at the time he gave the testimony what he had in front of him was the income tax return of Mr. Nelson.

Mr. Barrett: Can't the witness explain? He's competent enough without Miss Kelley guessing at it.

Exam. Baumgartner: Well, have the witness clear this up.

Miss Kelley: I was hoping he'd have the opportunity.

The Witness: I took it from the income tax statement yesterday that Kenneth Nelson did receive \$15,650.

Exam. Baumgartner: From whom?

The Witness: As tariff consultant, and the information

on the tax return does not show from whom, but to give you a concrete answer right now I'd say from Nelson.

Miss Kelley: Do you know for sure?

Exam. Baumgartner: Do you know?

The Witness: Positive.

Miss Kelley: Yes, or are you just—

Exam. Baumgartner: Just a moment. Are you positive that all of it came from L. Nelson Company? Can you say positively all of it, did?

The Witness: Yes.

By Mr. Barrett:

Q. All right, now we come back to my other question. In addition to that fifteen odd thousand dollars, do your [fol. 426] records reflect how much, if any, other income Mr. Kenneth Nelson received for 1952 as a tariff consultant?

Exam. Baumgartner: In what year was that?

Mr. Barrett: 1952.

Miss Kelley: I think that's too remote, Mr. Examiner. I can't see the materiality of it to the issues here.

Exam. Baumgartner: We are going back here four years.

Miss Kelley: At that time he had no connection with Gilbertville.

Exam. Baumgartner: You're asking now how much he received as a tariff consultant in 1952, right?

Mr. Barrett: I'm asking in addition to this fifteen odd thousand dollars that Mr. Solomon just told us was received from L. Nelson, how much if any in addition to that was received by Mr. Kenneth Nelson as a tariff consultant.

Exam. Baumgartner: He just gave us to understand this \$15,000 was all that he received during that year.

By Mr. Barrett:

Q. Is that correct?

A. Yes.

Q. Now, if I asked you the same questions for the year 1953 as to the \$13,800 that you mentioned, how much of that was received from L. Nelson by Mr. Kenneth Nelson for being tariff consultant?

A. All of it.

Exam. Baumgartner: Now, I'm sure the record shows the [fol. 427] answer to this question I'm about to ask, but I'd like to know what the answer is for my own benefit. Were these payments received prior to his connection with Gilbertville as a stockholder?

The Witness: Of course the payments in 1952 were prior to his becoming the stockholder; the payments in 1953, part of that would have to be after he became a stockholder of Gilbertville.

Exam. Baumgartner: Were any of the services for which he received that \$15,000 performed for Nelson after he became a stockholder in Gilbertville?

The Witness: First he became stockholder in Gilbertville in March 1st of 1953. The \$15,000 he received is in 1952.

Exam. Baumgartner: Oh, he received that for services rendered in 1952?

The Witness: Yes, sir.

Mr. Keenan: \$13,800 is the amount of 1953?

Exam. Baumgartner: \$13,800 is the amount in 1953?

The Witness: Right, sir.

Exam. Baumgartner: And was that received for services performed prior to his acquisition of Gilbertville stock?

The Witness: Some of that would have to be after.

Exam. Baumgartner: Afterward?

The Witness: Yes, sir.

By Mr. Barrett:

Q. Now, my last question, Mr. Solomon, it's more or less [fol. 428] a two-barrel one. If it takes a little time to give us the answers, maybe the Examiner will give us a recess.

Exam. Baumgartner: What's your question? You put your question to the witness.

By Mr. Barrett:

Q. For the years 1953, 1954 and 1955, will you give us total amounts paid to the Bergson Corporation respectively by L. Nelson and by Gilbertville, if you have that information available?

A. I will answer your last part of that question first. The testimony does state in each instance where Gilbertville rents any space they pay it directly to Nelson. That takes care of the second part of your question, correct?

Q. Right.

Miss Kelley: May I understand what they mean by the other part of the question. You're referring to the rents that are paid by L. Nelson to the Bergson Company?

Mr. Barrett: May I ask permission to amend my question?

Exam. Baumgartner: Surely.

By Mr. Barrett:

Q. Mr. Solomon, will you give us in view of your response, the total amount paid to the Bergson Corporation by Nelson for the years of 1953, 1954, 1955 and for the same years the total amount paid by Gilbertville to Nelson for its share of the rents, if any.

[fol. 430] The Witness: Yes, sir. The amount Nelson pays Gilbertville is \$8,100 per year. Nelson pays Bergson Corporation—I'm sorry—\$8,100 per year. I testified earlier they do pay \$675 per month to Bergson Company.

Miss Kelley: Mr. Examiner, is it all right if I ask him to explain how he arrived at the figures, if he had the figures or if he arrived at it by computation, just to clear it up.

Exam. Baumgartner: Now the record shows at Ellington Nelson pays Bergson \$675 a month rental?

The Witness: Yes, sir.

Exam. Baumgartner: Of which Gilbertville pays Nelson \$100 a month?

The Witness: Right, sir.

Exam. Baumgartner: That at Newton Nelson pays Bergson a rental of \$100 a month?

The Witness: Right, sir.

[fol. 431] Exam. Baumgartner: Of which \$100 is paid by Gilbertville to Nelson. That at Woonsocket, Nelson pays Bergson \$100 a month, of which Gilbertville pays \$100 a month to Nelson.

The Witness: Right.

Exam. Baumgartner: Now, that's the sum total of the payments from Nelson to Bergson?

The Witness: That's right, sir.

Exam. Baumgartner: And the sum total of the payment from Gilbertville to Nelson?

The Witness: Correct.

Exam. Baumgartner: And does Gilbertville pay Bergson anything directly?

The Witness: No, they do not. Gilbertville does not pay anything directly to Bergson Corporation.

Exam. Baumgartner: Does that answer your question?

Miss Kelley: Just one thing, Mr. Examiner, for clarification. I believe in Mr. Solomon's figure there is another terminal which is not shared with Gilbertville and that you have overlooked in your computation.

Exam. Baumgartner: That Nelson rents from Bergson?

Miss Kelley: Newton, Woonsocket, and Ellington you mentioned. At Newton Nelson pays Bergson \$100 a month; Woonsocket, Nelson pays Bergson \$100 a month, and at Ellington Nelson pays Bergson \$275 a month. That is a total of \$475 a month. I recollect that Mr. Solomon's figure [fol. 432] was \$675 a month, so that I want to call your attention to the fact that there is a fourth terminal involved in the figure that he has just given.

Exam. Baumgartner: Is that correct?

The Witness: That's correct, sir.

Exam. Baumgartner: Where is this other terminal?

The Witness: Philadelphia, \$200 a month.

Exam. Baumgartner: Does that constitute everything that Nelson pays to Bergson?

The Witness: Yes.

Exam. Baumgartner: That's the sum total?

The Witness: Yes, sir.

Exam. Baumgartner: All right.

By Mr. Barrett:

Q. So after that discussion I take it \$8100 for the three years was paid by Nelson to Bergson?

A. That's right.

Q. And I missed the Examiner's computation and I'm sorry, but for the same period how much has Gilbertville paid to Nelson?

A. Yes. In 1953—

Exam. Baumgartner: Let's put it in terms of monthly payments. That's what I was talking about.

The Witness: Monthly?

Exam. Baumgartner: Yes. I think the record shows \$300 a month.

The Witness: \$300 since January 1st of 1956.

Exam. Baumgartner: That's right, \$300 a month from [fol. 433] Gilbertville to Nelson.

Mr. Keenan: Mr. Examiner, the witness was going to testify about 1953 though.

Mr. Barrett: This is what I'm asking him, for the year 1953, 1954 and 1955 the totals for the year that Gilbertville paid to Nelson.

Miss Kelley: If he gives them monthly for each period, isn't it the same thing?

Exam. Baumgartner: If it's easier to give it monthly; if it's easier per annum, do that.

The Witness: 1953, \$1200 Bergson paid Nelson for the rental of terminals—

Exam. Baumgartner: Wait a minute.

Miss Kelley: Wait a minute.

The Witness: Bergson paid Nelson for the rental of the terminals. In 1954, \$1200 per year, and in 1955, \$1200 per year. Beginning in 1956 it's \$300 per month. There's a—as the volume increased, the rental went up.

Exam. Baumgartner: That was all covered yesterday?

The Witness: Yes.

[fol. 434] Redirect examination.

By Miss Kelley:

Q. Thank you. I'm sorry, but I'm in doubt as to whether Mr. Barrett covered these first two questions I have. I shall ask them and we can decide then. Did Oscar Chilberg in-

[fol. 435] vest any money in the Gilbertville Trucking Company?

A. He did not invest any money in the Gilbertville Trucking Company.

Q. Was Oscar Chilberg active in the negotiations which resulted in Kenneth Nelson purchasing the stock?

A. None at all.

Q. Now he was Treasurer of Gilbertville Trucking Company, I believe, for that first year?

A. That is correct.

Exam. Baumgartner: What first year?

Miss Kelley: The first year from March of 1953 to March or April of 1954, I believe.

The Witness: That's correct.

By Miss Kelley:

Q. Now during that period, Mr. Solomon, do you know whether he was active at all as Treasurer or drawing checks or anything of that type for Gilbertville Trucking Company?

A. He did not draw checks or do anything as far as Gilbertville Trucking Company goes.

Q. Now, insofar as Oscar Chilberg is concerned, do you know of any connection that he has with Gilbertville Trucking Company other than he used his name at the bank that you testified this morning and then his name was on the note, the \$10,000 note for Mr. Vachon that was paid?

A. That's his only connection with the Gilbertville Trucking Corporation.

Mr. Keenan: Mr. Examiner, I refrained from objecting to that question. However, may counsel be instructed not to ask leading questions?

Miss Kelley: I will try not to, but I'm just trying to get it over with.

Exam. Baumgartner: I think in the interest of speeding this up, maybe these questions could be a little bit leading, but I'd prefer if they weren't leading, Miss Kelley.

Miss Kelley: All right. I shall try and refrain from it.

By Miss Kelley:

Q. Did you cover whether or not Oscar Chilberg received any compensation of any kind from Gilbertville Trucking?

A. I did. I stated he never received anything. Oscar Chilberg never received anything from Gilbertville Trucking Company.

Q. Now, without referring to your files can you tell me, and this is only in the interest of saving time, the letters that you have referred to in your testimony that were sent to you by attorneys and various persons in connection with negotiations for Gilbertville Trucking Company, do they mention the names of any person other than Mr. Kenneth Nelson?

A. The various letters I received from attorneys and accountant and the insurance agent only mentioned Kenneth Nelson's name. They never mentioned anyone else's name: I have those on hand.

[fol. 438] By Miss Kelley:

Q. Mr. Solomon, there has been some discussion in cross-examination with respect to credit of Gilbertville Trucking Company, and you were asked to read into the record a letter from the First National Bank of Manchester, Connecticut. Is that the bank with which Gilbertville Trucking Company does its banking business?

A. That's correct.

Q. Now, does the Nelson Company do its banking business with the same bank or a different bank?

Mr. Keenan: Objection; it's immaterial, remote and has no probative value.

Exam. Baumgartner: I think it's as pertinent as a good many questions as were asked on cross-examination. The witness may answer.

The Witness: The Nelsons used the Connecticut Trust Company, whereas Gilbertville—

Exam. Baumgartner: You were just asked one question, Mr. Solomon.

The Witness: I'm sorry.

Exam. Baumgartner: Whether or not Nelson Trucking Company did business with the same bank.

The Witness: Nelson does not do business with the same bank.

Exam. Baumgartner: Thank you.

[fol. 439] By Miss Kelley:

Q. Now, Mr. Mueller, I believe, on cross-examination questioned you with respect to the building at Ellington, Connecticut. Do you recall that testimony?

A. Yes.

Q. And I believe that the record is clear that Nelson occupies the first floor of the building as an office and the Gilbertville occupies the second floor of the office.

A. Correct.

Exam. Baumgartner: And Byrnes occupies a portion of the first floor.

Miss Kelley: With Nelson.

By Miss Kelley:

Q. Now, Mr. Solomon, if a person were calling at that place to go to the office of the Gilbertville Trucking Company, when they go in the door how far do they go into the office before they mount the stairs to go up to the second floor?

Exam. Baumgartner: Oh, I think, Miss Kelley, that's getting—

Miss Kelley: Mr. Mueller made quite a point of it, Mr. Examiner, and I think I am entitled to clear it on this record.

Exam. Baumgartner: I don't think it's material.

[fol. 440] By Miss Kelley:

Q. Mr. Solomon, in your accounting practice do you have a number of different accounts?

A. I do.

Q. And do they represent diversified business?

A. They do.

Q. Does the type of advice and service which you render for the L. Nelson & Sons Company, having in mind the difference possibly of the nature of the business, differ in any way from the type of advice or service that you render for any of your clients?

A. No difference.

Q. If I ask you the same question with respect to the [fol. 441] Gilbertville Trucking Company?

A. It would be the same answer.

Q. Do you render bills for your services to the Nelson Transportation Company?

A. I do.

Q. And do you render bills to the Gilbertville Trucking Company?

A. Yes.

Q. And are they separate and distinct bills?

A. Yes.

Q. Does the Bergson Company own property other than that that is rented to L. Nelson & Sons as terminal property?

A. Bergson does own other properties than what it does rent to Nelson.

Q. And are those other properties rent-producing properties?

A. They are rent-producing properties, correct.

Q. Now, with the exception of the income from Nelson and income from the other rent-producing properties, does Bergson receive any other income—strike that.

Is the rent income the only sources of income to the Bergson Company?

A. Correct.

Q. Now, are any of the tenants of the Bergson Company a motor carrier other than L. Nelson—any of their other properties motor carrier properties?

[fol. 442] Mr. Keenan: I didn't understand the question. Perhaps counsel will rephrase it.

Exam. Baumgartner: Will you repeat the question?

Miss Kelley: I will repeat and rephrase it.

By Miss Kelley:

Q. Is the L. Nelson & Sons Company the only tenant of Bergson Company which is engaged in the motor transportation business?

A. Correct.

Exam. Baumgartner: And Gilbertville is a sub-tenant of Nelson's?

The Witness: That's correct, sir.

Mr. Barrett: While we are on it, to keep the record clear, can we ask what Byrnes is, if anything?

Exam. Baumgartner: Is Byrnes a sub-tenant of the Nelson Company?

The Witness: Byrnes?

Exam. Baumgartner: At any place is it a sub-tenant of Nelson Company?

The Witness: It is a sub-tenant of Nelson Company.

Exam. Baumgartner: At what point?

The Witness: At New York.

Exam. Baumgartner: At New York. Is that the only place?

The Witness: It's the only one that I know of.

Mr. Barrett: How about Ellington, Connecticut, while we are on it?

[fol. 443] The Witness: I don't know. I think I answered you earlier on that.

By Miss Kelley:

Q. Nelson is not the only tenant of the Bergson Company?

A. It is not the only tenant.

Q. You were asked about salary that the directors of the Bergson Company receive. Could you give us the amount of that salary either annually or monthly?

Mr. Keenan: Objection to the question unless the period involved is made clear.

Exam. Baumgartner: Yes, will you give us the period?

By Miss Kelley:

Q. You tell us during your last three years and also tell us whether all directors receive the same amounts or if they vary.

A. Ruth Nyberg, Greta Carlson and Howard Chilberg received during the year 1953, \$360 apiece.

Exam. Baumgartner: During the whole year.

The Witness: Again, for 1954 and 1955, those three individuals received \$360 per year. In 1955, to make up for back salaries of the directors, Charles Chilberg, Kenneth Nelson, Clifford Nelson, and Oscar Chilberg received \$1,080.

Mr. Keenan: When was that?

The Witness: In December, 1955.

Exam. Baumgartner: For the year 1955.

The Witness: Actually for three years, \$360 for three [fol. 444] years.

Mr. Keenan: One thousand?

The Witness: \$1,080.

Mr. Keenan: Each?

The Witness: Each, which is three times \$360 for three years.

By Miss Kelley:

Q. All right. At my request did you check the records of Gilbertville Trucking Company to determine the amount due them as of the present date? Mr. Barrett asked the question as of July 31, 1956, and I had in my notes that date and then a later computation. Have sums been paid since July 31, 1956 by Gilbertville to Nelson?

Exam. Baumgartner: To Nelson Company?

Miss Kelley: To the L. Nelson & Sons Company.

The Witness: I testified that as of July 31—you're speaking of Gilbertville to Nelson?

Miss Kelley: Yes.

The Witness: Gilbertville owed Nelson as of July 31, 1956, \$9,621.89, and during August, \$8,221.81 was paid by Gilbertville to Nelson of the old bill leaving a balance of the July payments.

Exam. Baumgartner: On the July amount?

The Witness: Of the July charges, of \$1400 still outstanding.

By Miss Kelley:

Q. And were you able to get a figure as to the current [fol. 445] figure for August?

A. For August?

Q. Yes. Was there a total or were there other bills that have been issued for August?

A. There should not be any because the bookkeepers now give checks for whatever is payable to the respective companies at the end of the month as soon as they get it from the rate clerks.

Q. My point is, are bills rendered other than on a monthly period between the two companies, or are they rendered weekly or how frequently?

A. They're rendered during the month. However, bills for a month may be held up by a rate clerk for checking.

Q. I see, but so far as you know at the present time only the account between them is \$1400?

A. That's right.

Exam. Baumgartner: That's of August 31, 1956.

By Miss Kelley:

Q. You were questioned, if you recall, with reference to who did the repair work for Nelson. It was brought out that some repair work was done by L. Nelson and Sons Company. Do you have knowledge as to other firms who do repair work for Gilbertville Trucking Company?

A. I do have knowledge of other companies doing repair work for Gilbertville, yes.

Q. Could you give us the names of those places or location?

[fol. 446] Exam. Baumgartner: Why is the specificity at this point material?

Miss Kelley: I don't know, but it was restricted and I think Mr. Mueller directed the question as to repair work that L. Nelson did.

Exam. Baumgartner: I recall that, but the witness has

stated they did repair work for others too. Isn't that sufficient? Do we have to have the names and amounts?

Miss Kelley: I don't want amounts particularly, but I just wanted places that Gilbertville had its vehicles repaired if he could give it to us without too much trouble.

Exam. Baumgartner: If he could say five other places, isn't that sufficient?

Miss Kelley: Yes.

By Miss Kelley:

Q. Can you tell us the number of places, as the Examiner suggests?

A. I have down here at least six different places.

Miss Kelley: The Examiner feels that's sufficient for our purpose, so I will go on.

Mr. Mueller: During what period?

By Miss Kelley:

Q. Oh, yes, during what period is that?

A. Since Gilbertville began—I mean was taken over by Kenneth Nelson.

Q. And have those repair places been used consistently since March of 1953 when Kenneth Nelson purchased the [fol. 447] stock of Gilbertville?

A. To my knowledge, yes.

Q. Do you know whether the New York terminal is shared with other motor carriers other than Gilbertville, Nelson and Byrnes?

A. I know it's rented from a trucker, Jordan & Smith.

Exam. Baumgartner: Do you know whether it is?

The Witness: It is.

By Miss Kelley:

Q. Is it your testimony that L. Nelson & Sons rents from a motor carrier by the name of Jordan?

A. Jordan & Smith or Smith & Jordan.

Q. And do you know whether Jordan & Smith or Smith & Jordan occupy part of that New York terminal?

A. I do not know.

Q. Did you tell us on the record what rent Gilbertville Trucking Company pays for the terminal space at Gilbertville, Mass.?

A. \$35 per month.

Q. Am I correct that you testified that the owner of that property is in no way connected with the Gilbertville-Nelson family?

A. That's right. Edgar Rickard owns it of Ware, Massachusetts.

Q. Does the terminal that is known as the Gilbertville Terminal have a street address?

A. Hardwick Road.

[fol. 448] Q. And is that Gilbertville, Massachusetts?

A. Gilbertville, Massachusetts.

By Miss Kelley:

Q. Mr. Solomon, do you recall a question by Mr. Mueller as to whether or not Gilbertville Trucking Company had purchased any equipment from the L. Nelson & Sons [fol. 449] Company?

A. Yes.

Q. And do you recall that your answer was then that you did not recall any such transaction?

A. I did, and last night—

Mr. Keenan: Objection. The witness is going to more than answer the question.

By Miss Kelley:

Q. And did you recheck some of the records that you had available?

A. I did.

Q. And at this time do you wish to change the answer that you made to Mr. Mueller?

A. I would like to. On October 5, 1954, Nelson sold Gilbertville the following equipment; Two 1948 International Tractors that had a depreciated cost to Nelson of \$100 each for \$200 each.

Exam. Baumgartner: I didn't get that. You mean depreciated value?

Mr. Keenan: I would appreciate hearing the answer so far.

Exam. Baumgartner: Miss Reporter, please read the answer.

(Answer read.)

Exam. Baumgartner: What do you mean by that statement? It had a depreciated cost to Nelson of \$100 each for \$200 each? What does that mean?

The Witness: The book cost of the tractor to Nelson is [fol. 450] \$100. You take the original cost less your depreciation.

Miss Kelley: I think if I ask a question I can clarify it.

Exam. Baumgartner: I wish you would. I'm not an accountant.

By Miss Kelley:

Q. Mr. Solomon—

Exam. Baumgartner: When you depreciate an item on the book, my understanding it is has a depreciated value to the owner, not a cost.

By Miss Kelley:

Q. Mr. Solomon, when new vehicles are put on the books of the Nelson Company, is a salvage value set up against each one of those vehicles?

A. That's correct.

Q. Now when you said the depreciated—

Exam. Baumgartner: The purpose of that, establishing the salvage value, is that for the purpose of establishing depreciation over a period of time?

The Witness: The salvage value is to allow what it would be traded in for or sold after a certain number of years.

By Miss Kelley:

Q. Isn't that in accordance with the Commission's regulations?

A. That is correct.

Q. That motor carriers establish a so-called salvage value?

A. Yes.

Q. Insofar as this equipment was concerned, was it completely depreciated except for this salvage value?

[fol. 451] A. It was completely depreciated except for the salvage value.

Exam. Baumgartner: And the salvage value of these two particular items was \$100 each?

The Witness: That's right.

Exam. Baumgartner: What did you mean, "for \$200"?

The Witness: They were sold by Nelson to Gilbertville for \$200.

Exam. Baumgartner: Well, now, that's clear.

Mr. Keenan: Gilbertville paid \$200 apiece of them.

Exam. Baumgartner: I didn't understand that.

The Witness: I'm sorry.

By Miss Kelley:

Q. Were those two tractors the only two motor vehicles that you found were sold by Nelson to Gilbertville?

A. Again, on October 5, 1954, two 1949 International Tractors that had a salvage value of \$100 each were sold by Nelson to Gilbertville for \$200 each.

Q. Well, that sale, then, of these four tractors was on the same date, is that correct?

A. That's correct.

Mr. Keenan: Mr. Examiner, if counsel would entertain it, recross-examination can be shortened if she will merely inquire of the witness what was the original cost of this equipment and at what rate was that depreciated.

[fol. 452] Exam. Baumgartner: Can you do that?

Miss Kelley: I will ask Mr. Solomon if he knows.

Mr. Keenan: And finally the date of acquisition. That gives us the whole picture on it, I should think.

Miss Kelley: The date that Nelson purchased it?

Exam. Baumgartner: The date of purchase, the amount paid, and the amount of depreciation.

Mr. Keenan: Rate.

Exam. Baumgartner: Rate of depreciation.

Miss Kelley: Maybe I can help him because my notes show the date of purchase.

The Witness: The two 1948 tractors, International Tractor No. 57—

Exam. Baumgartner: Skip all those details.

By Miss Kelley:

Q. Just when was it purchased?

A. In March and April of 1948.

Q. That's the first two tractors that you mentioned?

A. That's correct.

Mr. Keenan: Those are the '48 tractors?

The Witness: That's correct.

By Miss Kelley:

Q. What was the cost?

A. One of the tractors cost \$2,737 and the other tractor had originally cost \$2,548.

Q. And over what period have they been depreciated?

A. A 48-month period, four years.

[fol. 453] Exam. Baumgartner: At what rate?

The Witness: 48 months, or that would be 25 per cent per year.

Exam. Baumgartner: That was after deduction of the salvage value?

The Witness: After deducting the salvage value, correct, on the remaining balance.

Exam. Baumgartner: Now answer with respect to the other two.

The Witness: The other two tractors which are 1949 tractors and purchased in October of 1949 were each purchased for the sum of \$2,177 by Nelson.

Exam. Baumgartner: What was the period of depreciation?

The Witness: The same, 48 months.

By Miss Kelley:

Q. Do your records show whether Nelson, during the year 1954, replaced those tractors with other tractors?

A. They replaced them with other tractors, yes.

Mr. Mueller: Excuse me. For clarification, which of these tractors are you now referring to?

Miss Kelley: I'm referring to all four. In other words, did they buy four or more tractors in 1954?

The Witness: Yes, they did.

By Miss Kelley:

Q. Did a careful search of your records disclose any other sales of property from Nelson to Gilbertville?

[fol. 454] A. No other sales of property by Nelson to Gilbertville.

[fol. 455] Q. Now, you were questioned at length with respect to the increase in the assets of Gilbertville and the increase in the indebtedness of Gilbertville Trucking Company during the past, I believe, well, since 1953 up to the present time. Now, will you tell us if the increase in the assets and the liabilities of Gilbertville results principally from—

Exam. Baumgartner: Ask him what the results were from.

Miss Kelley: All right. Thank you, Mr. Examiner.

By Miss Kelley:

Q. What do they result principally from?

A. The increase in the assets, did you say?

Q. Increase in the assets and increase in the liabilities.

A. Well, the increase in the assets primarily are from the accounts receivable with more volume being done.

Q. And so far as the fixed assets are concerned?

A. Fixed assets have increased. At the same time their [fol. 456] liabilities are increasing.

[fol. 457] Exam. Baumgartner: She asked you what was the cause of the increase in assets, not how much they were.

The Witness: Because the liabilities increased, that's why the assets increased.

Exam. Baumgartner: Well, can't you put it a little more concretely than that?

The Witness: Well, buying revenue equipment which is an asset; you then take it upon yourself a liability, so all that's happening—

Exam. Baumgartner: That's the answer that we are asking.

By Miss Kelley:

Q. On the July 31, 1956 statement there appears an item, land—

Mr. Keenan: Objection. Will counsel indicate what document she is referring to as identified by the Court Reporter?

Miss Kelley: Exhibit No. 5.

The Witness: During 1956 Gilbertville Trucking Company purchased land for terminal purposes.

By Miss Kelley:

Q. And where is that land located?

A: Springfield, Massachusetts.

Q. Does the four thousand odd dollars represent the full consideration for that land?

Mr. Keenan: For clarity on the record, I presume counsel is referring to Exhibit 6.

Exam. Baumgartner: Correct.

[fol. 458] **The Witness:** To my knowledge it represents the full cost of the land. I'm not positive of that.

By Miss Kelley:

Q. Is the equipment of Gilbertville purchased, the new equipment you testified to, purchased on conditional sales contracts or under some other arrangement?

Mr. Keenan: Objection, repetition.

Exam. Baumgartner: I think that has been answered.

Miss Kelley: I don't recall it, and I checked my notes distinctly.

Exam. Baumgartner: I asked it myself. It was on conditional sale.

Miss Kelley: Thank you. I didn't take notes on your questions, I guess, **Mr. Examiner.**

By Miss Kelley:

Q. Now, Mr. Keenan addressed a question to you yesterday, Mr. Solomon, with respect to some money due Nelson from the Gilbertville Trucking Company, and his questions covered the periods or the dates specifically of December 31, 1953, December 1, 1954, May 31, 1955, December 31, 1955, and July 31, 1956. Do you recall that?

A. Yes, I do, and—

Exam. Baumgartner: Wait a minute; now, you answered the question.

By Miss Kelley:

Q. Can you tell us how the indebtedness from Gilbertville to Kenneth Nelson arose?

Mr. Keenan: I don't think I understand what counsel [fol. 459] means by the question, if the Examiner please. In other words, does she mean what did Gilbertville give—

Miss Kelley: Let me spell it out.

Mr. Keenan: —what did Kenneth Nelson give Gilbertville in return.

By Miss Kelley:

Q. In answer to Mr. Keenan's question according to my notes, you said that as of December 31, 1953, \$11,792.05 was due to Kenneth Nelson from Gilbertville Trucking Company; December 1, 1954, \$15,024.13; on May 31, 1955, \$14,037 and a few cents; December 31, 1955, \$19,597; and July 31, 1956, \$20,095.

Now, can you tell us what Kenneth Nelson gave to Gilbertville Trucking Company which resulted in that indebtedness, and incidentally, not to confuse the issue I just note here that in answer to Mr. Barrett this morning you said that a note for \$13,270.40 had resulted to Oscar Chil-

berg and Kenneth Nelson for the discharge of the liabilities.

A. Correct. However—

Mr. Keenan: Excuse me. What question is pending to the witness now? I'm definitely confused.

Miss Kelley: It's a long involved one because you claimed to be confused.

Exam. Baumgartner: We are addressing ourselves now to the basis for the indebtedness owed by Gilbertville Trucking Company to Kenneth Nelson as of these dates. Now, [fol. 460] what was the basis for the indebtedness?

The Witness: The basis for the indebtedness is salaries that Kenneth Nelson was entitled to from Gilbertville but he had not drawn. I think some confusion arose this morning when we stated that a sum was due to Kenneth Nelson and his brother, Oscar Chilberg, of \$13,000. I was not asked the question how was the payment of the \$10,000 note that was given to Mr. Vachon, how was that treated when it was paid by Gilbertville.

By Miss Kelley:

Q. Is that involved in your answer to my question?

A. That's correct.

Q. Would you explain it now, please?

A. If you recall, Mr. Barrett, you stated that the \$13,000 figure of note payable that appeared for Kenneth Nelson due from Gilbertville Trucking Company was created by the liabilities paid by the escrow agents on behalf of the Corporation, and I said it was treated as a note payable by Gilbertville to Kenneth Nelson and his brother, Oscar. However, within a year, the \$10,000 note that was due to Mr. Vachon was paid by Gilbertville Trucking Company and that \$10,000 was then charged against the note payable due by Kenneth Nelson.

Exam. Baumgartner: Due to Kenneth Nelson?

The Witness: Due to Kenneth Nelson, correct.

By Miss Kelley:

Q. Now, Mr. Solomon, do you recall your testimony that \$5,000 was invested as working capital by Kenneth Nelson [fol. 461] in Gilbertville?

A. That's right.

Q. Is that reflected in these figures?

A. That is reflected in those figures.

Q. As to the sums owed Kenneth Nelson from Gilbertville?

A. That is correct.

Q. Does that fully explain those obligations of Gilbertville to Kenneth Nelson?

A. Yes.

Mr. Keenan: Objection— Objection withdrawn. May the witness be instructed not to answer a question when an objection is pending?

Exam. Baumgartner: I would have overruled the objection anyway.

Mr. Keenan: That's why I withdrew it, but as a matter of hearing practice—

Exam. Baumgartner: I think you're right, Mr. Keenan. When an attorney starts to object, please refrain from answering and give him an opportunity to object.

By Miss Kelley:

Q. My recollection is that you testified the last year that Greta Carlson received salary from L. Nelson & Sons, was in 1953?

A. That's correct.

Q. And do you know what Greta Carlson's occupation has been since that time?

[fol. 462] A. Yes, she went to work for another corporation, an electronics corporation.

Q. Has she since married?

A. She's a housewife at present.

Q. Now, Mr. Keenan asked you a question with respect to the sums owed by the L. Nelson & Sons Company to members of the Nelson-Chilberg Family as of December 31, 1953. I believe that according to my notes you testified

that Charles Chilberg was owed \$40,279.92; Clifford Nelson was owed \$6,340.22. On December 31, 1953, Greta Carlson, \$5,032.77; Kenneth Nelson, \$3,401.24; Ruth Nyberg, \$3,562.67; and Augustine Nelson, \$3,310.28.

I believe you were asked for an explanation of those sums as to how the obligations arose. Have you checked your records as to the basis for those obligations?

A. I have checked my records.

Q. And can you explain the basis of those individual obligations at this time?

A. Yes, I can. On December 31, 1952, Nelson Corporation owed a note to the estate of Linnea Nelson in the sum of \$24,938.66. When the estate was closed and distributed, the \$24,938.66 due to the estate was then divided into one-seventh for each of the seven children, and the books of Nelson's instead of reflecting one note payable of \$24,938.66, then reflected the sum of \$3,562.67 due to each of her [fol. 463] children, which is dividing the \$24,938.66 by seven.

Q. Now the excess in each of these sums over \$3,562.67 and the sum owed to Augustine Nelson represent what? Do you know what that represented?

A. The father did not take his full salary.

Q. Well, for example, the figure that you gave as being owed to Greta, \$5,000 odd dollars, the difference between the \$3,562.67 and \$5,000 would be what?

A. \$1,470.10 that was due on Greta's salary had not been paid.

Q. And as far as Clifford and Charles were concerned, was that also salary?

A. That was for salary.

Q. Plus the inheritance?

A. That's correct.

Q. Is that Augustine or Gustav?

A. Gustav Nelson.

Q. Now to your knowledge are Mr. Zandan and Mr. Paroshinsky practitioners before the Interstate Commerce Commission or familiar with the Commission practice?

Mr. Keenan: Objection, no relevance.

Exam. Baumgartner: Well, let him answer.

The Witness: I do not know.

Miss Kelley: That's all I have at this time.

Exam. Baumgartner: Let's take a recess until 4:35.

(Short recess.)

[fol. 464] Exam. Baumgartner: Let us come to order. Mr. Mueller, it's up to you to proceed next on recross.

Recross examination.

By Mr. Mueller:

Q. Mr. Solomon, in answer to Miss Kelly, you stated that the L. Nelson Transportation Company—that is, the corporation—does not do any banking business at the Manchester Bank where Mr. Kenneth Nelson and Oscar Chilberg floated their loan as a purchaser of the Gilbertville stock. I would like to ask you whether any of the various members of the Chilberg and Nelson family do business with that bank in Manchester?

A. They do.

Q. Can you name the members of the family who do business with that bank?

A. Yes. Charles Chilberg and Clifford Nelson do business.

Q. Is that all?

A. That would be all to my knowledge, yes.

Q. Now, in speaking of repairs, you have said, in response to Miss Kelly's question, that the Gilbertville Trucking Company has employed at least six repairmen or garage men for the repair of Gilbertville equipment since Mr. Kenneth Nelson took over the stock?

A. Yes.

Q. Can you, in percentagewise, or dollarwise, tell us, sir, how the outside repairs were compared with the volume done in the L. Nelson shops for Gilbertville?

A. I could not give you the breakdown that way, no. Sorry.

[fol. 465] Q. Couldn't you give us an estimate?

A. No, I couldn't.

Q. Could you tell us anything about the nature of the services performed in the outside shops as compared with the nature of the services performed in the Nelson Shop?

A. Yes. To my knowledge they are the same type of services—the outside shops and the ones that Nelson has.

Q. Would a major motor overhaul, for example, be performed in an outside shop or in the Nelson Shop?

A. It would just as likely be done in an outside shop as in the Nelson Shop.

Q. Is there any rule in existence which would determine which—

A. There would not be any rule.

Exam. Baumgartner: Is there any practice?

The Witness: No. There would not be.

Exam. Baumgartner: Any pursuant practice of giving certain types of jobs to the Nelson people?

The Witness: There may be, but I have never looked at it in that light.

Exam. Baumgartner: Not looked at it, but do you know?

The Witness: Do do not know.

[fol. 467] By Mr. Keenan:

Q. Mr. Solomon, am I correct in inferring from Exhibit 23 that the Gilbertville Trucking Company, Inc., owns no real estate?

A. Exhibit No. 23 was to reconcile the figure on Exhibit No. 6—tangible property, carrier operating property, it's headed.

Q. I think that answers my question: In other words, the words that head up the Exhibit No. 23—"All Property"—are a little bit of a misnomer. Is that right?

A. That's right. It should say "Except Land."

Exam. Baumgartner: Yes.

By Mr. Mueller:

Q. No. I think, if I understand it correctly, it should [fol. 468] read "Statement of Ledger Value of All Tangible Property of Gilbertville Trucking Company." Is that right?

A. Thank you very much.

Exam. Baumgartner: Tangible Property Except Land?

Mr. Mueller: Except Land.

[fol. 470] Exam. Baumgartner: Well, I don't think we are going to get into value, either. Does the property that is rented by Nelson from Bergson represent ten per cent of the total property owned by Bergson?

Mr. Keenan: According to what measures?

Exam. Baumgartner: Five per cent, or fifty per cent, or what—

Mr. Keenan: According to what measures, sir? I should like to know how the witness is measuring this percentage—by acreage or book value or cost, or what?

Exam. Baumgartner: Well, let's make it on the square foot basis.

Mr. Keenan: However he can do it.

[fol. 471] The Witness: Then the major part of its property, then, is rented to others, if it's on an acreage basis.

By Mr. Keenan:

Q. How about on a dollar-and-cents basis?

A. That would take me a little time to compute here.

Exam. Baumgartner: Give us a rough approximation, Mr. Witness. I think that will be sufficient.

The Witness: About one-third of the dollar value is rented to others.

Mr. Keenan: I see, sir.

Exam. Baumgartner: Is rented to others?

The Witness: Yes—than Nelson.

By Mr. Keenan:

Q. And is it also true that about two-thirds of the revenue accruing to Bergson comes from Nelson?

A. That would be approximately correct, yes.

Exam. Baumgartner: These are just rough approximations.

[fol. 473] The Witness: There are some properties that are not rented at all to anybody.

By Mr. Keenan:

Q. Does that conclude the answer?

A. Yes, sir.

Q. Now, does Bergson rent property to members of the L. Nelson family? In other words, to any children of Mrs. Linnea Nelson in their private capacity?

Miss Kelley: I object as being immaterial.

Exam. Baumgartner: Do you know?

The Witness: I do not know.

[fol. 474] By Mr. Keenan:

Q. That's a quick answer. With respect to the four tractors sold by L. Nelson to Gilbertville, answer this question, please: On the books of L. Nelson prior to the transfer of the four units of equipment, was this equipment charged with a depreciation expense monthly during each of the 48 months when it was being depreciated at a uniform rate in the journal entries of L. Nelson?

A. That is correct, sir, each month.

[fol. 479] Exam. Baumgartner: Exhibits for identification Nos. 1 through 12 and 22 and 23 offered by the Applicant are received in evidence.

(The documents heretofore marked as Applicant's Exhibits Nos. 1 through 12 and 22 and 23, Witness Solomon, were received in evidence.)

Miss Kelley: Mr. Chilberg.